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THE

CIVIL CODE

OF THE

STATE OF CALIFORNIA,

AS ENACTED IN 1872, AMENDED AT SUBSEQUENT SESSIONS, AND ADAPTED TO THE CONSTITUTION OF 1879; AND AN APPENDIX OF GENERAL LAWS UPON THE SUBJECTS EMBRACED IN THE CODE, WITH CITATIONS UP TO AND INCLUDING VOLUME 147, CALIFORNIA REPORTS.

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THE CIVIL CODE

OF THE

STATE OF CALIFORNIA.

IN FOUR DIVISIONS.

THE

CIVIL CODE

OF THE

STATE OF CALIFORNIA.

AN ACT TO ESTABLISH A CIVIL CODE.

[Approved March 21st, 1872.]

The people of the state of California, represented in senate and assembly, do enact as follows:

TITLE OF THE ACT.

§ 1. This act shall be known as the Civil Code of the state of California, and is in four divisions, as follows:—

I. The first relating to persons.

II. The second to property.

III. The third to obligations.

IV. The fourth contains general provisions relating to the three preceding divisions. En. March 21, 1872.

Act, how cited: See sec. 21, post.

PRELIMINARY PROVISIONS.

§ 2. When this code takes effect.
§ 3. Not retroactive.
§ 4. Rules of construction.
§ 5. Provisions similar to existing laws, how construed.
§ 6. Actions, etc., not affected.
§ 7. Holidays.
§ 8. Same
§ 9. Business days.
§ 10. Computation of time.
§ 11. Certain acts not to be done on holidays.
§ 12. Joint authority construed.
§ 13. Words and phrases, how construed.
§ 14. Certain terms defined.
§ 15. Good faith, what constitutes. (Repealed.)
§ 16. Degrees of care and diligence. (Repealed.)
§ 17. Degrees of negligence. (Repealed.)
§ 18. Notice, actual and constructive.
§ 19. Constructive notice, when deemed.
§ 20. Effect of repeal.
§ 21. This act, how cited.

§ 2. When this code takes effect. This code takes effect at twelve o'clock noon on the first day of January, eighteen hundred and seventy-three. En. March 21, 1872.

Effect of codes generally: See Pol. Code, secs. 4478 et seq.

Similar provision in other codes of California: See sec. 2 thereof.

Publication of the codes: See Pol. Code, sec. 4494.

§ 3. Not retroactive. No part of it is retroactive, unless expressly so declared. En. March 21, 1872.

Cal. Rep. Cit. 95, 201; 106, 680; 133, 527.

§ 4. Rules of construction. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice. En. March 21, 1872.

Cal. Rep. Cit. 51, 257; 54, 619; 66, 434; 67, 386; 69, 370; 74, 590; 75, 56; 98, 551; 104, 299; 104, 302; 105, 558; 107, 4; 123, 201; 124, 397; 125, 68; 127, 126; 136, 142; 145, 715; 146, 247; 146, 465.

Effect of codes generally: See Pol. Code, secs. 4478 et seq.

§ 5. Provisions similar to existing laws, how construed. The provisions of this code so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments. En. March 21, 1872.

Cal. Rep. Cit. 75, 69; 87, 647; 98, 33; 104, 584; 120, 491; 120, 493; 120, 494; 121, 246; 130, 382; 136, 142.

§ 6. Actions, etc., not affected. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions. En. March 21, 1872.

Cal. Rep. Cit. 95, 202.

Similar provisions: See Code Civ. Proc., sec. 8; Pol. Code, sec. 8.

The amendatory act of March 30, 1874, amendments 1873-4, 181-269, from which most of the amendments and new sections of the Civil Code are taken, contained three additional sections, relating to its effect, as follows:

Sec. 286. All provisions of law inconsistent with the provisions of this act are hereby repealed, but no rights acquired or proceedings taken under the provisions repealed shall be impaired or in any manner affected by this repeal; and whenever a limitation or period of time is prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this act takes effect, and the same or any other limitation is prescribed by this act, the time of limitation which shall have run when this act takes effect shall be deemed part of the time prescribed by this act.

Effect of amendatory act as to other acts passed at session of 1871-2 is shown by the following provision:

Sec. 287. With relation to the laws passed at the present session of the legislature, this act must be construed as though it had been passed at the first day of the present session; if the provisions of any law passed at the present session of the legislature contravene or are inconsistent with the provisions of this act, the provisions of such law must prevail.

Sec. 288. This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

§ 7. Holidays. Holidays, within the meaning of this code, are every Sunday, the first day of January, the

§7
Am'd.

twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the first Monday of September, the twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of the state, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, or the twenty-fifth day of December shall fall upon a Sunday, the Monday following is a holiday. En. March 21, 1872. Am'd. 1880, 9; 1889, 47; 1893, 186; 1897, 14.

§ 8. Same. En. March 21, 1872. Rep. 1905, 11.

§ 9. Business days. All other days than those mentioned in section seven are to be deemed business days for all purposes. En. March 21, 1872. Am'd. 1905, 11.

See sec. 11.

§ 10. Computation of time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. En. March 21, 1872.

Cal. Rep. Cit. 107, 284; 118, 88; 119, 88; 131, 594.

Time, how computed, and year, week, and day defined: See Pol. Code, secs. 3255 et seq.

§ 11. Certain acts not to be done on holidays. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. En. March 21, 1872.

Cal. Rep. Cit. 110, 551; 136, 193; 136, 256.

§ 12. Joint authority construed. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority. En. March 21, 1872.

Cal. Rep. Cit. 100, 132.
Similar provisions: Code Civ. Proc., sec. 15; Pol. Code, sec. 15.

§ 13. Words and phrases, how construed. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition. En. March 21, 1872.

Cal. Rep. Cit. 75, 73; 131, 435; 136, 464; 138, 366; 145, 84; 145, 409; 146, 733.

Similar provisions: See Code Civ. Proc., sec. 16; Pol. Code, sec. 16.

Words and phrases, how construed.—The above is the general rule with regard to the construction of words, whether in contracts, statutes, or constitutions. The meaning to be given to words in contracts is provided for in this code, secs. 1644, 1645, and in the Code of Civil Procedure, sec. 1861.

§ 14. Certain terms defined. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person, county includes city and county; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is by mark it must in order that the same may be acknowledged or may serve as the signature to any sworn statement be witnessed by two persons who must subscribe their own names as witnesses thereto. The following words have in this code the signification attached to them in this section unless otherwise apparent from the context:

1. The word "property" includes property real and personal;

2. The words "real property" are coextensive with lands, tenements, and hereditaments;

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

4. The word "month" means a calendar month, unless otherwise expressed;

5. The word "will" includes codicil;

6. The word "section" whenever hereinafter employed refers to a section of this code, unless some other code or statute is expressly mentioned. En. March 21, 1872. Am'd. 1873-4, 181; 1903, 407.

Cal. Rep. Cit. 54, 109; 62, 184; 72, 57; 73, 322; 91, 248; 96, 600; 110, 396; 113, 353; 135, 172; 140, 409; 141, 115. Subd. 2—142, 539. Subd. 3—73, 322; 142, 539. Subd. 4—131, 594; 133, 71; 134, 289; 135, 172. Subd. 5—58, 375.

Similar provisions: Pol. Code, sec. 17; Code Civ. Proc., sec. 17; Pen. Code, sec. 7.

Words used in boundaries are defined in secs. 3903 to 3907 of the Political Code.

§ 15. Good faith, what constitutes. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

§ 16. Degrees of care and diligence. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

§ 17. Degrees of negligence. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

Cal. Rep. Cit. 53, 460; 66, 590.

§ 18. Notice, actual and constructive. Notice is:

1. Actual—Which consists in express information of a fact; or,

2. Constructive—Which is imputed by law. En. March 21, 1872.

Cal. Rep. Cit. 97, 584; 118, 260; 119, 451; 131, 587; 132, 593.

§ 19. Constructive notice, when deemed. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which,

by prosecuting such inquiry, he might have learned such fact. En. March 21, 1872. Am'd. 1873-4, 182.

Cal. Rep. Cit. 77, 456; 82, 626; 97, 584; 118, 260; 119, 451; 120, 284; 122, 101; 122, 521; 123, 166; 128, 224; 131, 587; 139, 257; 140, 46.

Constructive notice—Recording instruments: See post, sec. 1213.

§ 20. Effect of repeal. No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed or abrogated.

This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided. En. March 21, 1872.

Cal. Rep. Cit. 68, 303; 96, 493; 109, 580; 121, 364.

Similar provisions: Pol. Code, sec. 18; Code Civ. Proc., sec. 18.

Statutes continued in force: See sec. 19 of the Political Code and sec. 23 of the Penal Code and Statutes in force.

Vested rights: See ante, sec. 6.

§ 21. This act, how cited. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "The Civil Code," adding, when necessary, the number of the section. En. March 21, 1872.

Title of the act: See ante, sec. 1.

DIVISION FIRST.

Part I. Persons, §§ 25-42.

II. Personal Rights, §§ 43-50.

III. Personal Relations, §§ 55-276.

IV. Corporations, §§ 283-653.

PART I.

PERSONS.

§ 25. Minors, who are.
§ 26. Periods of minority, how calculated.
§ 27. Adults, who are.
§ 28. Status of minors, how changed. (Repealed.)
§ 29. Unborn child.
§ 30. Persons made adults by other states, considered as such in this state, when domiciled herein. (Repealed.)
§ 31. Minors by the laws of other state or country, how considered in this state. (Repealed.)
§ 32. Custody of minors.
§ 33. Minors cannot give a delegation of power.
§ 34. Contracts by minors.
§ 35. When minor may disaffirm.
§ 36. Cannot disaffirm contract for necessaries.
§ 37. Nor certain obligations.
§ 38. Contracts of persons without understanding.
§ 39. Contracts by persons of unsound mind.
§ 40. Powers of persons whose incapacity has been adjudged.
§ 41. Minors liable for wrongs, but not liable for exemplary damages.
§ 42. Minors may enforce their rights.

§ 25. Minors, who are. Minors are:

1. Males under twenty-one years of age;

2. Females under eighteen years of age. En. March 21, 1872.

Cal. Rep. Cit. Subd. 2—119, 601.

§ 26. Periods of minority, how calculated. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority. En. March 21, 1872.

§ 27. Adults, who are. All other persons are adults. En. March 21, 1872.

§ 28. Status of minors, how changed. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

§ 29. Unborn child. A child conceived, but not yet born, is to be deemed an existing person, so far as may be

necessary for its interests in the event of its subsequent birth. En. March 21, 1872.

Cal. Rep. Cit. 87, 21; 132, 580; 139, 483.

Posthumous children, rights of: See post, secs. 698, 739, 1339, 1403.

§ 30. Persons made adults by other states, considered as such in this state, when domiciled herein. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

§ 31. Minors by the laws of other state or country, how considered in this state. (Repealed.) En. March 21, 1872. Rep. 1873-4, 182.

§ 32. Custody of minors. The custody of minors and persons of unsound mind is regulated by Part III of this division. En. March 21, 1872.

§ 33. Minors cannot give a delegation of power. A minor cannot give a delegation of power, nor under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control. En. March 21, 1872. Am'd. 1873-4, 182.

Cal. Rep. Cit. 74, 56; 115, 151.

§ 34. Contracts by minors. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on Marriage, and on Master and Servant. En. March 21, 1872. Am'd. 1873-4, 183.

Marriage: See secs. 56 et seq.

Master and servant: See secs. 264 et seq.

§ 35. When minor may disaffirm. In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen,

it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent. En. March 21, 1872. Am'd. 1873-4, 183.

Cal. Rep. Cit. 66, 337; 89, 581; 123, 639; 123, 641.

§ 36. **Cannot disaffirm contract for necessaries.** A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. En. March 21, 1872. Am'd. 1873-4, 183.

Cal. Rep. Cit. 123, 640.

§ 37. **Nor certain obligations.** A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute. En. March 21, 1872.

Cal. Rep. Cit. 123, 640.

§ 38. **Contracts of persons without understanding.** A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. En. March 21, 1872, Am'd. 1873-4, 183.

Cal. Rep. Cit. 85, 190; 110, 296; 134, 568; 139, 511.

§ 39. **Contracts by persons of unsound mind.** A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on Rescission of this code. En. March 21, 1872. Am'd. 1873-4, 184.

Cal. Rep. Cit. 85, 190; 110, 296; 140, 152.

Rescission of contracts: See post, secs. 1688-1691, 3406-3408.

§ 40. **Powers of persons whose incapacity has been adjudged.** After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, or waive any right, until his restoration to capacity. But a certificate

from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge. En. March 21, 1872. Am'd. 1877-8, 75.

Cal. Rep. Cit. 57, 531; 87, 198; 110, 296.

§ 41. Minors liable for wrongs, but not liable for exemplary damages. A minor or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful. En. March 21, 1872.

§ 42. Minors may enforce their rights. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same. En. March 21, 1872.

Cal. Rep. Cit. 74, 55.

PART II.

PERSONAL RIGHTS.

§ 43. General personal rights.
§ 44. Defamation, what.
§ 45. Libel, what.
§ 46. Slander, what.
§ 47. What communications are privileged.
§ 48. Malice not inferred.
§ 49. Protection to personal relations.
§ 50. Right to use force.
§ 51. Personal rights, all personal persons have equal.
§ 52. Violation of personal rights, damages.
§ 53. Admittance to places of amusement, etc., on presentation of ticket or price of ticket; exceptions.
§ 54. Violation of right of admission to place of amusement, damages.

§ 43. General personal rights. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations. En. March 21, 1872.

Cal. Rep. Cit. 111, 45; 119, 601; 122, 256; 124, 199.

Political rights and duties: See Pol. Code, secs. 50-60.

§ 44. Defamation, what. Defamation is effected by:

1. Libel;
2. Slander. En. March 21, 1872.

Cal. Rep. Cit. 70, 136.

§ 45. Libel, what. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. En. March 21, 1872.

Cal. Rep. Cit. 69, 528; 69, 529; 70, 275; 114, 272; 132, 227; 146, 620.

Pleading libel: See secs. 460, 461, Code Civ. Proc.

Privileged publication: See secs. 47, 48, infra.

§ 46. Slander, what. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;

2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

4. Imputes to him impotence or a want of chastity; or,

5. Which, by natural consequence, causes actual damage. En. March 21, 1872.

Cal. Rep. Cit. 67, 80; 68, 193; 70, 218; 82, 526; 84, 180; 91, 111; 105, 320; 123, 159. Subd. 2—122, 61. Subd. 3—137, 343.

§ 47. **What communications are privileged.** A privileged publication is one made—

1. In the proper discharge of an official duty.

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

4. By a fair and true report, without malice, in a public journal, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, or of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued.

5. By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit. En. March 21, 1872. Am'd. 1873-4, 184; 1895, 167.

Cal. Rep. Cit. 69, 529; 69, 627; 69, 630; 93, 70; 93, 236; 137, 349; 146, 620. Subd. 3—91, 112; 111, 611; 111, 612; 137, 349. Subd. 4—132, 229.

§ 48. **Malice not inferred.** In the cases provided for in subdivisions three, four, and five, of the preceding section,

malice is not inferred from the communication or publication. En. March 21, 1872. Am'd. 1895, 167.

Cal. Rep. Cit. 70, 136; 93, 70; 132, 229; 146, 620.

§ 49. Protection to personal relations. The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody.

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master. En. March 21, 1872. Am'd. 1905, 68.

Cal. Rep. Cit. 98, 582; 122, 256; 122, 257; 122, 259.

Action for seduction: See secs. 374, 375, Code Civ. Proc.

§ 50. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest. En. March 21, 1872. Am'd. 1873-4, 184.

Lawful resistance to the commission of offenses: See Pen. Code, secs. 692-694.

§ 51. Personal rights, all persons have equal. All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens. En. Stats. 1905, 553.

51, 52. The statute of 1897, page 137, relating to the rights of persons, is codified in the two sections above named.—Code Commissioner's Note.

§ 52. Violation of personal rights; damages. Whoever violates any of the provisions of the last preceding section, by denying to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or by aiding or inciting such denial, or who-

ever makes any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating-house, barber-shop, bathhouse, theater, skating-rink, or other public place of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, for each and every such offense is liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose. En. Stats. 1905, 553.

See note to § 51, ante.

§ 53. Admittance to places of amusement, etc., on presentation of ticket, or price of ticket; exceptions. It is unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theater, melodeon, museum, circus, caravan, racecourse, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years, who presents a ticket of admission acquired by purchase, or who tenders the price thereof for such ticket, and who demands admission to such place. Any person under the influence of liquor, or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement. En. Stats. 1905, 554.

53, 54. The statute of 1893, page 220, relating to the rights of persons, is codified in the sections above named.—Code Commissioner's Note.

§ 54. Violation of right of admission to place of amusement; damages. Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any such person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto. En. Stats. 1905, 554.

See note to § 53, ante.

PART III.

PERSONAL RELATIONS.

Title I. Marriage, §§ 55-181.
II. Parent and Child, §§ 193-230.
III. Guardian and Ward, §§ 236-258.
IV. Master and Servant, §§ 264-276.

TITLE I.

MARRIAGE.

Chapter I. The Contract of Marriage, §§ 55-80.
II. Divorce, §§ 82-148.
III. Husband and Wife, §§ 155-181.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

Article I. Validity of Marriage, §§ 55-63.
II. Authentication of Marriage, §§ 68-79½.
III. Judicial Determination of Void Marriage, § 80.

ARTICLE I.

VALIDITY OF MARRIAGE.

§ 55. What constitutes marriage.
§ 56. Minors capable of contracting marriage.
§ 57. Marriage, how manifested and proved.
§ 58. Certain marriages voidable.
§ 59. Incompetency of parties to.
§ 60. Marriages illegal.
§ 61. Marriage illegal unless divorced one year; or absent five years.
§ 62. Released from marriage contract, when.
§ 63. Marriage contracted without the state.

§ 55. What constitutes marriage. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by this code. En. March 21, 1872. Am'd. 1895, 121.

Cal. Rep. Cit. 67, 212; 75, 8; 75, 9; 75, 12; 75, 13; 75, 14; 75, 15; 75, 16; 75, 17; 75, 18; 75, 19; 75, 21; 75, 22; 75, 23; 75, 24; 75, 35; 75, 50; 75, 51; 75, 57; 75, 59; 75, 72; 75, 76; 79, 644; 79, 651; 79, 667; 79, 669; 79, 684; 81, 189; 82, 416; 82, 417; 89, 49; 89, 50; 99, 288; 104, 261; 104, 633; 104, 634; 105, 360; 121, 628; 121, 629; 128, 310; 133, 527; 137, 146.

§ 56. Minors capable of contracting marriage. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage. En. March 21, 1872.

Cal. Rep. Cit. 75, 14; 75, 16; 79, 667; 123, 226.

§ 57. Marriage, how manifested and proved. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases. En. March 21, 1872. Am'd. 1895. 121.

Cal. Rep. Cit. 75, 15; 75, 16; 75, 51; 75, 52; 75, 63; 75, 76; 79, 667; 79, 686; 79, 694; 116, 313; 133, 527.

§ 58. Certain marriages voidable. En. March 21, 1872. Am'd. 1873-4, 185. Rep. 1905, 554.

The provisions of this section are contained in the present section 82. The section is therefore unnecessary.—Code Commissioner's Note.

Cal. Rep. Cit. 138, 549.

Penalty for false personation in marital relations: Pen. Code, sec. 528.

See also, post, sec. 82, subd. 4.

§ 59. Incompetency of parties to. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate. En. March 21, 1872.

Penalty for incestuous marriages: Pen. Code, secs. 285, 359.

§ 60. Marriages, illegal. All marriages of white persons with negroes, mongolians, or mulattoes are illegal and void. En. March 21, 1872. Am'd. 1905, 554.

The change consists in the insertion of the word "mongolians" after the word "negroes."—Code Commissioner's Note.

Cal. Rep. Cit. 137, 135.

§ 61. Marriage illegal unless divorced one year; or absent five years. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved. In no case can a marriage of either of the parties during the life of the other, be valid in this state, if contracted within one year after the entry of an interlocutory decree in a proceeding for divorce.

2. Unless such former husband or wife is absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or is generally reputed or believed by such person to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal. En. March 21, 1872. Am'd. 1873-4, 185; 1897, 34; 1903, 176.

Cal. Rep. Cit. 94, 459; 133, 527; 137, 131; 137, 132; 137, 135; 137, 137; 137, 138; 137, 139; 137, 142; 137, 144; 139, 632; 140, 248; 140, 249; 140, 485; 140, 488; 146, 247; 146, 249; 146, 252. Subd. 1—137, 133; 137, 134. Subd. 2—94, 464; 140, 247.

Penalty for bigamy: Pen. Code, secs. 283-84; exceptions, idem, sec. 282.

§ 62. Released from marriage contract, when. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. En. March 21, 1872. Am'd. 1873-4, 185.

§ 63. Marriage contracted without the state. All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state. En. March 21, 1872.

Cal. Rep. Cit. 121, 624; 137, 135; 137, 136; 137, 137; 137, 138; 137, 139; 137, 145; 137, 147.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

§ 68. Procedure required.
§ 69. Marriage licenses.
§ 70. By whom solemnized.
§ 71. No particular form of solemnization.
§ 72. Requirements by persons solemnizing marriage.
§ 73. Certificate of marriage.
§ 74. Certificate to parties and recorder.
§ 75. Declaration where there is no record. (Repealed.)
§ 76. Declaration to contain what.
§ 77. To be acknowledged and recorded.
§ 78. Either party may proceed to determine validity.
§ 79. Persons who may be married without license.
§ 79a. Members of particular religious denomination.

§ 68. Procedure required. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but noncompliance with its provisions by others than a party to a marriage does not invalidate it. En. March 21, 1872. Am'd. 1895, 121; 1905, 554.

The change consists in the substitution of the word "others" for "other" before "than"; the substitution of "a party" for "the parties" after "than"; and the substitution of "it" for "that marriage" after "invalidate." The meaning of the section is unchanged.—Code Commissioner's Note.

Cal. Rep. Cit. 104, 261; 116, 311; 121, 628; 133, 527.

p. 399 **§ 69. Marriage licenses.** All persons about to be joined
n marriage must first obtain a license therefor from the
§69 county clerk of the county in which the marriage is to be
Am'd. celebrated, and must upon oath qualify and show as fol-
p. 399 lows:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. Their ages;

4. No license must be granted when either of the parties applicants therefor is an imbecile or insane, or who at the time of making application for said license is under the influence of any intoxicating liquor, or narcotic drug;

5. No license must be issued authorizing the marriage of a white person with a negro, mulatto, or mongolian;

6. If the male is under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother or guardian, if such consent is given; or that such nonage person has been previously, but is not at the time married.

If the male is under the age of twenty-one, or the female under the age of eighteen years, and such person has not been previously married, no license must be issued by the clerk, unless the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian is presented to him duly verified by such parents or parent or guardian; and such consent must be filed by the clerk and he must state such facts in the license. For the purpose of ascertaining all the facts mentioned and required in this section, the clerk must at the time the license is applied for examine the parties to whom the license is to be issued under oath and reduce such examination to writing to be by them subscribed. En. March 21, 1872. Am'd. 1873-4, 185; 1880, 3; 1905, 182.

Cal. Rep. Cit. 59, 374; 116, 311; 121, 629; 123, 226.

§70 Am'd. p. 400 **§ 70. By whom solemnized.** Marriage may be solemnized by either a justice of the supreme court, judge of the superior court, justice of the peace, judge of any police

court, city recorder, priest or minister of the gospel of any denomination. En. March 21, 1872. Am'd. 1880, 4; 1903, 255.

Cal. Rep. Cit. 75, 12; 116, 311; 121, 628; 121, 629; 140, 221.

Form of marriage ceremony: See Const. Cal. 1879, art. XX, sec. 7; see, also, art. XI, sec. 12, former constitution.

Penalty for solemnization of illegal marriage: Pen. Code, sec. 359.

§ 71. No particular form of solemnization. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife. En. March 21, 1872.

Cal. Rep. Cit. 75, 12; 121, 628; 133, 527.

§ 72. Requirements by persons solemnizing marriage. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license. En. March 21, 1872. Am'd. 1873-4, 186.

§ 73. Certificate of marriage. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate showing:

1. The fact, time and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony. En. March 21, 1872. Am'd. 1873-4, 187.

Penalty for false return: Pen. Code, sec. 360.

§ 74. Certificate to parties and recorder. He must, at the request of, and for either party make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage. En. March 21, 1872.

Recorder must record: Pol. Code, sec. 4235.

§ 75. Declaration where there is no record. (Repealed.) En. March 21, 1872. Rep. 1895, 121.

Cal. Rep. Cit. 75, 60; 75, 66; 75, 77; 79, 651; 104, 261; 116, 311; 121, 628.

§ 76. Declaration to contain what. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages and residences of the parties.
2. The fact of marriage.
3. That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses. En. March 21, 1872. Am'd. 1873-4, 187.

Cal. Rep. Cit. 116, 310; 116, 311; 116, 312; 121, 629.
Recording: Sec. 79a, post.

§ 77. To be acknowledged and recorded. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. En. March 21, 1872.

Cal. Rep. Cit. 75, 77; 116, 311; 121, 629.
Recording: See Pol. Code, sec. 4235.

§ 78. Either party may proceed to determine validity. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared. En. March 21, 1872. Am'd. 1883, 3.

Cal. Rep. Cit. 67, 194; 67, 195; 75, 12; 121, 623.

§ 79. Persons who may be married without license. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made. En. Stats. 1877-8, 75.

Cal. Rep. Cit. 104, 261.

§ 79a. Members of particular religious denomination. The provisions of this chapter, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in section seventy-six, and be acknowledged and recorded, as provided in section seventy-seven. Where a marriage is declared as provided in said section seventy-six, the husband must file said declaration with the county recorder within thirty days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law. En. Stats. 1897, 186. Am'd. 1905, 555.

79a (79½). The change consists in the omission of the words "procuring a license and" after "to," thus requiring a license in every case, but leaving the mode of celebrating the marriage as at present. The section is renumbered 79a.—Code Commissioner's Note.

Cal. Rep. Cit. 121, 629.

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGES.

§ 80. Action to have marriage declared void.

§ 80. Action to have marriage declared void. Either party to an incestuous or void marriage may proceed by action in the superior court, to have the same so declared. En. Stats. 1875-6, 69. Am'd. 1880, 4.

CHAPTER II.

DIVORCE.

Article I. Nullity, §§ 82-86.
II. Dissolution, §§ 90-107.
III. Causes for Denying Divorce, §§ 111-121.
IV. General Provisions, §§ 136-148.

ARTICLE I.

NULLITY.

§ 82. Causes for annulling marriages.
§ 83. Actions therefor, when to be commenced.
§ 84. Children of annulled marriage.
§ 85. Custody of children.
§ 86. Effect of judgment of nullity.

§ 82. Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband and wife.

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable. En. March 21, 1872. Am'd. 1873-4, 187.

Cal. Rep. Cit. 88, 565; 99, 287. Subd. 2—94, 464. Subd. 5—137, 27.

Subd. 4. Consent obtained by fraud: See ante, sec. 58.

Subd. 5. Consent obtained by force: See ante, sec. 58.

Subd. 6. Physical incapacity: See ante, sec. 58.

§ 83. Actions therefor, when to be commenced. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

6. For causes mentioned in subdivision six: by the injured party, within four years after the marriage. En. March 21, 1872. Am'd. 1873-4, 188.

§ 84. Children of annulled marriages. A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment. En. March 21, 1872. Am'd. 1905, 555.

The design of the amendment is to make the rule declared in this section applicable to all judgments adjudging marriage null, the present section applying only to cases where a marriage is annulled on the ground that a former husband or wife was living.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 491.

Legitimate children, who are: See secs. 193-195. See, also, when the question arises in divorce cases for adultery, secs. 144, 145.

§ 85. Custody of children. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party. En. March 21, 1872.

Custody of children in divorce causes: See post, sec. 138.

§ 86. Effect of judgment of nullity. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them. En. March 21, 1872.

Effect of decree for divorce: See post, sec. 91.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

§ 90. Marriage, how dissolved.
§ 91. Effect of divorce.
§ 92. Causes for divorce.
§ 93. Adultery defined.
§ 94. Extreme cruelty, what.
§ 95. Desertion, what.
§ 96. Desertion, how manifested.
§ 97. In case of stratagem or fraud, who commits desertion.
§ 98. In case of cruelty, where one party leaves the other, who commits desertion.
§ 99. Separation by consent not desertion.
§ 100. Absence becomes desertion, when.
§ 101. Consent to separate revocable.
§ 102. Desertion, how cured. Effect of refusing condonation.
§ 103. Wife must abide by husband's selection of home or it is desertion on her part.
§ 104. If the place is unfit, and wife refuses to conform, it is desertion by the husband.
§ 105. Willful neglect, what.
§ 106. Habitual intemperance, what.
§ 107. Habitual intemperance, etc., for one year.

§ 90. Marriage, how dissolved. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 137, 27; 137, 134; 137, 137; 137, 138; 137, 139; 137, 144.

§ 91. Effect of divorce. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 137, 133; 137, 134; 137, 137; 137, 138; 137 139; 137, 144; 140, 488.

§ 92. Causes for divorce. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 51, 544; 74, 492; 85, 256; 126, 128. Subd. 3—135, 397.

Alimony: See post, secs 136 et seq.

Community property, and its disposition under proceedings for divorce: See post, secs. 141 et seq.

§ 93. Adultery defined. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. En. March 21, 1872.

Cal. Rep. Cit. 51, 544.

Open and notorious adultery is punished by act of May 15, 1872. See Stats. 1871-2, p. 380.

§ 94. Extreme cruelty, what. Extreme cruelty is the wrongful infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage. En. March 21, 1872. Am'd. 1905, 75.

Cal. Rep. Cit. 51, 544; 85, 256; 85, 267; 85, 269; 86, 224; 95, 176; 124, 652.

§ 95. Desertion, what. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert. En. March 21, 1872.

Cal. Rep. Cit. 51, 544; 65, 632; 122, 255; 122, 256; 130, 577; 134, 89; 142, 523.

§ 96. Desertion, how manifested. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion. En. March 21, 1872.

Cal. Rep. Cit. 51, 544; 136, 196; 137, 560; 144, 627.

§ 97. In case of stratagem or fraud, who commits desertion. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other. En. March 21, 1872.

Cal. Rep. Cit. 51, 544; 74, 613.

§ 98. In case of cruelty, where one party leaves the other, who commits desertion. Departure or absence of one party from the family dwelling-place, caused by cruelty or by threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party. En. March 21, 1872.

Cal. Rep. Cit. 51, 544; 74, 613; 86, 224; 122, 397; 122, 398; 134, 207.

§ 99. Separation by consent not desertion. Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion. En. March 21, 1872.

Cal. Rep. Cit. 74, 613; 106, 544; 140, 115.

Consent revocable: See infra, sec. 101.

§ 100. Absence becomes desertion, when. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 106, 544.

§ 101. Consent to separate revocable. Consent to a separation is a revocable act, and if one of the parties afterward, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion. En. March 21, 1872.

Cal. Rep. Cit. 105, 543; 106, 544; 134, 347; 140, 115; 140, 117; 140, 125; 147, 177.

§ 102. Desertion, how cured. Effect of refusing condonation. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal. En. March 21, 1872. Am'd. 1873-4, 190.

Cal. Rep. Cit. 65, 632; 123, 654; 123, 656; 126, 128; 147, 54.

§ 103. Wife must abide by husband's selection of home or it is desertion on her part. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion. En. March 21, 1872.

Cal. Rep. Cit. 136, 203.

Same principle: Post, sec. 156.

Separate domicile for purposes of divorce proceeding: See infra, sec. 129.

§ 104. If the place is unfit, and wife refuses to conform, it is desertion by the husband. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him. En. March 21, 1872.

Cal. Rep. Cit. 74, 613.

§ 105. Willful neglect, what. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation. En. March 21, 1872.

Cal. Rep. Cit. 51, 544; 104, 296; 130, 577.

Duration of neglect: See infra, sec. 107.

§ 106. Habitual intemperance, what. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. En. March 21, 1872.

Cal. Rep. Cit. 62, 178; 80, 529; 96, 7; 130, 577.

Duration of intemperance: See next section.

§ 107. Habitual intemperance, etc., for one year. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for divorce. En. March 21, 1872.

Cal. Rep. Cit. 74, 613; 122, 255; 123, 654; 135, 397.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

§ 111. Divorces denied, on showing what.
§ 112. Connivance, what.
§ 113. Corrupt consent, how manifested.
§ 114. Collusion, what.
§ 115. Condonation, what.
§ 116. Requisites to condonation.
§ 117. Condonation implies what.
§ 118. Evidence of condonation.
§ 119. Condonation can only be made when.
§ 120. Concealment of facts in certain cases makes condonation void.
§ 121. Condonation, how revoked.
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§ 123. Condonation, when to bar defense.
§ 124. Divorces, denied, when.
§ 125. Lapse of time establishes certain presumptions.
§ 126. Presumptions may be rebutted.
§ 127. Limitation of time.
§ 128. Residence of plaintiff.
§ 129. Proof of actual residence required. Presumptions do not apply.
§ 130. Divorce not to be granted by default, etc.
§ 131. Interlocutory judgment.
§ 132. Final judgment after one year.

§ 111. Divorces denied, on showing what. Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time. En. March 21, 1872.

Cal. Rep. Cit. 74, 613.

Connivance: Post, sec. 112 et seq.
Collusion: Post, sec. 114.
Condonation: Post, sec. 115 et seq.

Recrimination: Post, sec. 122 et seq.
Limitation and lapse of time: Post, sec. 124 et seq.

§ 112. **Connivance, what.** Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. En. March 21, 1872.

Cal. Rep. Cit. 121, 12.

§ 113. **Corrupt consent, how manifested.** Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of. En. March 21, 1872.

§ 114. **Collusion, what.** Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. En. March 21, 1872.

Cal. Rep. Cit. 65, 355; 121, 12.

§ 115. **Condonation, what.** Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. En. March 21, 1872.

Cal. Rep. Cit. 102, 438; 123, 656; 147, 54.

Revoking condonation: Sec. 121, infra.
Condonation of recriminatory defense: Post, sec. 123.

§ 116. **Requisites to condonation.** The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights. En. March 21, 1872.

Cal. Rep. Cit. 95, 446; 102, 438; 147, 54.

§ 117. **Condonation implies what.** Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness. En. March 21, 1872.

Cal. Rep. Cit. 117, 446; 120, 189; 147, 54.

§ 118. **Evidence of condonation.** Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts con-

stituting such cause unless accompanied by an express agreement to condone. En. March 21, 1872. Am'd. 1873-4, 190.

Cal. Rep. Cit. 117, 447; 119, 188; 119, 192; 132, 476.

§ 119. Condonation can only be made when. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. En. March 21, 1872. Am'd. 1873-4, 190.

§ 120. Concealment of facts in certain cases makes condonation void. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation. En. March 21, 1872.

§ 121. Condonation, how revoked. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled. En. March 21, 1872.

Cal. Rep. Cit. 120, 189; 121, 12.

§ 122. Recrimination, what. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce. En. March 21, 1872.

Cal. Rep. Cit. 63, 353; 74, 492; 119, 189.

§ 123. Condonation, when to bar defense. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown. En. March 21, 1872. Am'd. 1873-4, 190.

§ 124. Divorces denied, when. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the

act of adultery, or after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. En. March 21, 1872. Am'd. 1873-4, 191.

Cal. Rep. Cit. 74, 613; 104, 296; 140, 118. Subd. 3—121, 12; 140, 117.

§ 125. **Lapse of time establishes certain presumptions.** Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense. En. March 21, 1872.

Cal. Rep. Cit. 121, 12; 140, 118.

§ 126. **Presumptions may be rebutted.** The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action. En. March 21, 1872.

§ 127. **Limitation of time.** There are no limitations of time for commencing actions for divorce, except such as are contained in section 124. En. March 21, 1872.

§ 128. **Residence of plaintiff.** A divorce must not be granted unless the plaintiff has been a resident of the state for one year, and of the county in which the action is brought three months next preceding the commencement of the action. En. March 21, 1872. Am'd. 1891, 52.

Cal. Rep. Cit. 74, 613; 100, 13; 100, 15; 100, 17; 128, 332; 140, 483.

§ 129. **Proof of actual residence required. Presumptions do not apply.** In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions. En. March 21, 1872.

Cal. Rep. Cit. 66, 310; 128, 274; 132, 92.

§ 130. Divorce not to be granted by default, etc. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers. En. March 21, 1872. Am'd. 1873-4, 191.

Cal. Rep. Cit. 49, 94; 63, 580; 65, 355; 67, 24; 74, 614; 86, 221; 88, 48; 94, 227; 120, 37; 120, 186; 124, 58; 140, 119; 140, 483; 145, 787.

§ 131. Interlocutory judgment. In actions for divorce the court must file its decision and conclusions of law as in other cases and if it determines that no divorce shall be granted, final judgment must thereupon be entered accordingly. If it determines that the divorce ought to be granted an interlocutory judgment must be entered, declaring that the party in whose favor the court decides is entitled to a divorce, and from such interlocutory judgment an appeal may be taken within six months after its entry, in the same manner and with like effect as if the judgment were final. En. Stats. 1903, 75.

Cal. Rep. Cit. 140, 479; 140, 480; 140, 488; 143, 631; 146, 247; 146, 249; 146, 252; 146, 259; 147, 337.

§ 132. Final judgment after one year. When one year has expired after the entry of such interlocutory judgment, the court on motion of either party, or upon its own motion, may enter the final judgment granting the divorce, and such final judgment shall restore them to the status of single persons, and permit either to marry after the entry thereof; and such other and further relief as may be necessary to complete disposition of the action, but if any appeal is taken from the interlocutory judgment or motion for a new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed. The death of either party after the entry of the interlocutory judgment does not impair the power of the court to enter final judgment as hereinbefore provided; but such entry shall not validate any marriage contracted by either party before the entry of such final judgment, nor constitute any defense of any criminal prosecution made against either. En. Stats. 1903, 76.

Cal. Rep. Cit. 140, 480; 140, 488; 143, 631; 146, 247; 146, 249; 146, 252; 147, 337.

ARTICLE IV.

GENERAL PROVISIONS.

§ 136. Relief may be adjudged in some cases, where separation is denied.
§ 137. Expense of action, alimony.
§ 138. Orders respecting custody of children.
§ 139. Support of wife and children on divorce or separation granted to wife.
§ 140. Security for maintenance and alimony.
§ 141. Court shall resort to what, in executing certain sections.
§ 142. If wife has sufficient for her support, court may withhold allowance.
§ 143. Community and separate property may be subjected to support and educate children.
§ 144. Legitimacy of issue.
§ 145. Same.
§ 146. Disposition of community property on divorce.
§ 147. Same.
§ 148. Such an action subject to revision on appeal.

§ 136. Relief may be adjudged in some cases, where separation is denied. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them. En. March 21, 1872. Am'd. 1905, 634.

Cal. Rep. Cit. 68, 589; 68, 590; 74, 611; 74, 612; 74, 614; 79, 338; 79, 339; 124, 53; 124, 54; 124, 55; 126, 126; 126, 127; 126, 129; 147, 176.

Alimony generally: See next section.

§137 Am'd. p. 400

§ 137. Expense of action, alimony. When an action for divorce is pending the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and her children, or to prosecute or defend the action. When the wife has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for a divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court. En. March 21, 1872. Am'd. 1877-8, 76; 1880, 4; 1905, 205.

Cal. Rep. Cit. 55, 320; 67, 177; 67, 201; 67, 203; 75, 38; 79, 339; 80, 144; 83, 463; 91, 431; 95, 342; 97, 126; 97, 127; 98, 321; 99, 621; 100, 494; 104, 47; 104, 297; 109, 545; 109, 649; 113, 271; 115, 273; 115, 275; 117, 634; 122, 397; 123, 654; 124, 395; 124, 397; 126, 125; 126, 126; 126, 127; 126, 128; 126, 129; 135, 125; 136, 304; 137, 226; 143, 633; 144, 326; 146, 242; 147, 59; 147, 60; 147, 147; 147, 176.

See sec. 127, infra.

§ 138. Orders respecting custody of children. In actions for divorce the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper, and may at any time modify or vacate the same. En. March 21, 1872. Am'd. 1905, 43.

Cal. Rep. Cit. 95, 377; 104, 48; 105, 261; 106, 380; 114, 545; 118, 21; 120, 146; 120, 147; 125, 68; 125, 69; 125, 70; 135, 193; 137, 495.

Exclusive control of child without divorce: Secs. 199, 214.

Awarding custody of child, considerations that should guide the court: See, post, sec. 246.

§ 139. Support of wife and children on divorce or separation granted to wife. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects. En. March 21, 1872.

Cal. Rep. Cit. 52, 384; 59, 418; 75, 46; 79, 515; 79, 602; 79, 603; 82, 112; 83, 463; 83, 465; 94, 255; 95, 377; 102, 440; 104, 47; 105, 261; 114, 545; 114, 547; 124, 588; 125, 68; 144, 326; 147, 60.

Compare with sec. 148.

§ 140. Security for maintenance and alimony. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by

any other remedy applicable to the case. En. March 21, 1872.

Cal. Rep. Cit. 67, 202; 111, 495; 114, 546; 115, 274; 115, 275; 116, 51; 123, 200; 124, 55; 124, 589; 126, 129; 144, 325; 144, 326; 147, 59; 147, 61.

§ 141. Court shall resort to what, in executing certain sections. In executing the five preceding sections the court must resort:

1. To the community property; then,

2. To the separate property of the husband. En. March 21, 1872.

Cal. Rep. Cit. 67, 202; 83, 466; 114, 547; 115, 275.

§ 142. If wife has sufficient for her support, court may withhold allowance. When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband. En. March 21, 1872.

§ 143. Community and separate property may be subjected to support and educate children. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just. En. March 21, 1872.

§ 144. Legitimacy of issue. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected. En. March 21, 1872.

Legitimacy of children: See generally, post, sec. 193. See, also, the next section.

§ 145. Same. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. En. March 21, 1872.

§ 146. Disposition of community property on divorce. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead shall be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be as-

signed to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely, or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party. En. March 21, 1872. Am'd. 1873-4, 191.

Cal. Rep. Cit. 47, 64; 63, 77; 75, 46; 75, 439; 83, 465; 97, 191; 102, 340; 106, 513; 106, 613; 106, 614; 114, 546. Subd. 1—112, 277; 134, 379; 134, 380. Subd. 3— 73, 429; 80, 239; 124, 653. Subd. 4—78, 316; 117, 409; 121, 95; 124, 588; 129, 292.

Discretion of court: See post, sec. 148.

§ 147. Same. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds. En. March 21, 1872. Am'd. 1873-4, 192.

Cal. Rep. Cit. 47, 64; 75, 414; 83, 465; 106, 513; 112, 278.

§ 148. Such an action subject to revision on appeal. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. En. March 21, 1872. Am'd. 1873-4, 192.

Cal. Rep. Cit. 60, 580; 67, 212; 75, 415; 97, 191; 97, 192; 111, 89; 112, 278; 134, 379.

CHAPTER III.

HUSBAND AND WIFE.

§ 155. Mutual obligations of husband and wife.
§ 156. Rights of husband, as head of family.
§ 157. In other respects their interest separate.
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§ 159. How far may alter their legal relations.
§ 160. Consideration for agreement of separation.
§ 161. May be joint tenants, etc.
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§ 163. Separate property of the husband.
§ 164. Community property. Conveyances by married woman. Limitations.
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§ 172. Power of the husband over community property.
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§ 174. Support of wife.
§ 175. Husband not liable when abandoned by wife.
§ 176. When wife must support husband.
§ 177. Rights of husband and wife governed by what.
§ 178. Marriage settlement contracts, how executed.
§ 179. To be acknowledged and recorded.
§ 180. Effect of recording.
§ 181. Minors may make marriage settlements.

§ 155. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support. En. March 21, 1872.

Cal. Rep. Cit. 75, 36; 82, 417; 92, 655; 117, 635; 130, 286.

Mother aiding in support of children: Post, sec. 196.

Wife's support of husband: See infra, sec. 176.

Husband's support of wife: See infra, secs. 174, 175, and ante, sec. 105, where the failure so to do gives ground for divorce.

§ 156. Rights of husband, as head of family. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto. En. March 21, 1872.

Cal. Rep. Cit. 67, 391; 123, 655; 137, 275.

Head of family for homestead purposes: See post, sec. 1261.

Parent changing residence of child: Post, sec. 213.

Husband's selection of dwelling-place, desertion if wife does not conform thereto: Sec. 108.

§ 157. In other respects their interests separate. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. En. March 21, 1872.

Cal. Rep. Cit. 115, 272; 135, 125.

§ 158. Husband and wife may make contracts. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the title on Trusts. En. March 21, 1872.

Cal. Rep. Cit. 52, 335; 53, 459; 53, 460; 54, 178; 54, 179; 55, 58; 59, 513; 59, 516; 64, 398; 64, 399; 67, 294; 67, 540; 70, 252; 70, 285; 73, 585; 74, 348; 74, 349; 75, 528; 78, 312; 83, 278; 87, 649; 94, 461; 96, 439; 96, 610; 96, 611; 97, 134; 97, 262; 98, 460; 100, 279; 100, 280; 103, 100; 103, 101; 106, 455; 114, 568; 115, 672; 120, 323; 120, 324; 120, 326; 121, 94; 122, 366; 123, 496; 126, 33; 129, 289; 130, 393; 134, 172; 134, 173; 134, 174; 134, 175; 134, 606; 135, 317; 137, 693; 137, 695; 137, 697; 139, 253; 142, 124; 143, 649; 145, 599.

§ 159. How far may alter their legal relations. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation. En. March 21, 1872. Am'd. 1873-4, 193.

Cal. Rep. Cit. 53, 459; 54, 178; 64, 399; 73, 585; 96, 439; 100, 279; 106, 455; 106, 545; 118, 501; 121, 94; 122, 366; 126, 33; 145, 599.

Marriage settlements: Post, secs. 177-181.

§ 160. Consideration for agreement of separation. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section. En. March 21, 1872.

§ 161. May be joint tenants, etc. A husband and wife may hold property as joint tenants, tenants in common, or as community property. En. March 21, 1872.

Cal. Rep. Cit. 53, 459; 53, 460; 70, 285; 116, 341; 116, 343; 131, 67; 139, 560; 145, 480.

§ 162. Separate property of the wife. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property. En. March 21, 1872.

Cal. Rep. Cit. 49, 192; 53, 459; 54, 178; 55, 56; 55, 58; 70, 426; 70, 284; 80, 67; 87, 468; 94, 429; 95, 352; 105, 691; 106, 612; 109, 59; 110, 425; 132, 323; 134, 604; 134, 606; 143, 295; 147, 515; 147, 522.

§ 163. Separate property of the husband. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property. En. March 21, 1872.

Cal. Rep. Cit. 70, 284; 79, 310; 87, 468; 94, 429; 106, 612; 109, 59; 132, 323; 134, 604; 142, 5; 142, 6; 147, 515.
Community property: See the definition, sec. 687.
Community property liable for what debts: Sec. 167.
Husband's control over community property: Sec. 172.
Descent of community property: Post, secs. 1401, 1402.

§ 164. Community property. Conveyances by married woman. Limitations. All other property acquired after marriage by either husband or wife, or both, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance be to such married woman and to her husband, or to her and any other person, the presumption is that the married woman takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or encumbrancer in good faith and for a valuable consideration. And in cases where married women have conveyed or shall hereafter convey, real property which they acquired prior to May nineteenth, eighteen hundred and eighty-nine, the husbands, or their heirs or assigns, of such married women, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property, as follows: As to conveyances heretofore made from and after one year from the

date of the taking effect of this act; and as to conveyances hereafter made from and after one year from the filing for record in the recorder's office of such conveyances respectively. En. March 21, 1872. Am'd. 1889, 328; 1893, 71; 1897, 63.

Cal. Rep. Cit. 70, 284; 70, 426; 80, 48; 83, 529; 87, 468; 94, 429; 98, 267; 101, 565; 105, 691; 106, 361; 106, 612; 109, 59; 109, 60; 122, 360; 122, 361; 124, 218; 125, 13; 126, 32; 132, 322; 132, 323; 134, 405; 134, 406; 134, 604; 134, 606; 136, 33; 138, 571; 138, 572; 142, 121; 143, 295; 143, 647; 147, 522.

§ 165. Inventory of separate property of wife. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside. En. March 21, 1872.

Cal. Rep. Cit. 67, 459; 81, 95; 81, 96; 83, 278; 102, 551; 124, 202; 124, 203; 124, 204.

§ 166. Filing inventory notice of wife's title. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife. En. March 21, 1872. Am'd. 1873-4, 193.

Cal. Rep. Cit. 67, 459; 81, 95; 81, 96; 83, 278; 124, 202.

§ 167. Community property, contract by wife. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband. En. March 11, 1872. Am'd. 1873-4, 193.

Cal. Rep. Cit. 53, 459; 54, 178; 54, 623; 58, 119; 62, 639; 96, 611; 112, 398; 116, 342.

Debts of wife: See secs. 170, 171, 174.

Community property is liable for husband's debts: Sec. 172.

Necessaries furnished wife: See sec. 174.

§ 168. Earnings of wife not liable for debts of husband. The earnings of the wife are not liable for the debts of the husband. En. March 21, 1872.

Cal. Rep. Cit. 53, 459; 63, 391; 70, 426; 116, 342; 121, 25.

§ 169. Earnings of wife when living separate, separate property. The earnings and accumulations of the wife,

and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife. En. March 21, 1872.

Cal. Rep. Cit. 53, 459; 70, 426; 71, 426; 79, 202; 87, 468; 94, 429; 116, 342.

Sole traders—As to married women becoming sole traders, and their rights and liabilities as such, see Code Civ. Proc., secs. 1811-1821, inclusive.

§ 170. Liability for debts of wife contracted before marriage. The separate property of the husband is not liable for the debts of the wife contracted before the marriage. En. March 21, 1872.

Cal. Rep. Cit. 119, 146; 53, 460; 70, 285; 71, 422; 121, 25; 137, 276.

§ 171. Wife's property not liable for debts of the husband, but liable for her own debts. The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that such property is liable for the payment of debts contracted by the husband or wife for the necessaries of life furnished to them or either of them while they are living together. Provided that the provisions of this act shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise or succession after marriage. En. March 21, 1872. Am'd. 1905, 206.

Cal. Rep. Cit. 53, 460; 54, 178; 121, 25.

§ 172. Power of the husband over community property. The husband has the management and control of the community property, with the like absolute power of disposition, other than testamentary, as he has of his separate estate; provided, however, that he cannot make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent thereto; and provided also, that no sale, conveyance or encumbrance of the furniture, furnishings and fittings of the home, or of the clothing and wearing apparel of the wife or minor children, which is community property shall be made without the written consent of the wife. En. March 21, 1872. Am'd. 1891, 425; 1900-01, 598.

Cal. Rep. Cit. 58, 119; 70, 245; 81, 242; 85, 283; 87, 468; 112, 397; 116, 340; 116, 342; 116, 344; 116, 350; 135, 125; 137, 356; 139, 656; 142, 522; 145, 599.

Testamentary control over community property: See post, secs. 1401, 1402, which prescribe the course of descent

of common property, and limit the power of testamentary disposition over the same.

Community property generally: See supra, sec. 164.

Dissolution of the community by divorce: See secs. 147, 148.

§ 173. Curtesy and dower not allowed. No estate is allowed the husband as tenant by curtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. En. March 21, 1872.

Cal. Rep. Cit. 74, 103.

§ 174. Support of wife. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. En. March 21, 1872. Am'd. 1873-4, 193.

Cal. Rep. Cit. 69, 522; 69, 523; 100, 346; 129, 20; 129, 23.

§ 175. Husband not liable when abandoned by wife. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. En. March 21, 1872. Am'd. 1873-4, 193.

Cal. Rep. Cit. 54, 397; 69, 522.

§ 176. When wife must support husband. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself. En. March 21, 1872. Am'd. 1873-4, 194.

Cal. Rep. Cit. 117, 634; 117, 636.

Mutual obligations of support: See ante, sec. 155.

§ 177. Rights of husband and wife governed by what. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto. En. March 21, 1872.

Cal. Rep. Cit. 87, 647.

§ 178. Marriage settlement contracts, how executed. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as

a grant of land is required to be executed and acknowledged or proved. En. March 21, 1872.

Cal. Rep. Cit. 75, 300.

§ 179. To be acknowledged and recorded. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract. En. March 21, 1872.

§ 180. Effect of recording. The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property. En. March 21, 1872.

§ 181. Minors may make marriage settlements. A minor incapable of contracting marriage may make a valid marriage settlement. En. March 21, 1872.

Cal. Rep. Cit. 87, 647.

TITLE II.

PARENT AND CHILD.

Chapter I. By Birth, §§ 193-215.
II. By Adoption, §§ 221-230.

CHAPTER I.

CHILDREN BY BIRTH.

§ 193. Legitimacy of children born in wedlock.
§ 194. Children after dissolution of marriage.
§ 195. Who may dispute the legitimacy of a child.
§ 196. Obligation of parents for the support and education of their children.
§ 197. Custody of legitimate child.
§ 198. Husband and wife living separate, neither to have superior right to custody of children.
§ 199. When husband or wife may bring action for the exclusive control of children. Decree in such cases.
§ 200. Custody of an illegitimate child.
§ 201. Allowance to parent.
§ 202. Parent cannot control the property of child.
§ 203. Remedy for parental abuse.
§ 204. When parental authority ceases.
§ 205. Remedy when a parent dies without providing for the support of his child.
§ 206. Reciprocal duties of parents and children in maintaining each other.
§ 207. When a parent is liable for necessaries supplied to a child.
§ 208. When a parent is not liable for support furnished his child.
§ 209. Husband not bound for the support of his wife's children by a former marriage.
§ 210. Compensation and support of adult child.
§ 211. Parent may relinquish services and custody of child.
§ 212. Wages of minors.
§ 213. Right of parent to determine the residence of child.
§ 214. Wife in certain cases may obtain custody of minor children.
§ 215. Child legitimized by marriage of parents.

§ 193. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate. En. March 21, 1872.

Cal. Rep. Cit. 75, 381; 137, 300; 145, 715.

Legitimacy of children of nullified marriage: See ante, sec. 84.

Legitimacy in cases of adultery: See ante, secs. 144, 145.

Rebutting presumption of legitimacy: Sec. 195, infra.

Legitimating children by marriage of parents: See post, sec. 215.

Father legitimating child by acknowledging it: Sec. 230; and compare post, sec. 1387.

Mother entitled to custody of illegitimate unmarried minor: See post, sec. 200.

Illegitimate's earnings: See sec. 200.

Illegitimates, heirs to whom: Post, sec. 1387.

Mother succeeds to estate of illegitimate: Post, sec. 1388.

§ 194. Children after dissolution of marriage. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. En. March 21, 1872. Am'd. 1873-4, 194.

Cal. Rep. Cit. 75, 381; 137, 134.

§ 195. Who may dispute the legitimacy of a child. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact. En. March 21, 1872.

Cal. Rep. Cit. 75, 381; 137, 303.

§ 196. Obligation of parents for the support and education of their children. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability. En. March 21, 1872.

Cal. Rep. Cit. 71, 497; 95, 378; 109, 648; 130, 382; 134, 116; 145, 716.

Action to enforce parental duty: Sec. 203, infra.

Third person supplying necessaries: Secs. 207, 208, infra.

Willful failure to support child is a misdemeanor: Pen. Code, sec. 270.

Deserting child is a felony: Pen. Code, sec. 271.

Disposing of child for mendicant purposes: See Pen. Code, sec. 272.

Supporting poor relatives: See sec. 206, infra.

Injury to child, action for: See Code Civ. Proc., sec. 376.

§ 197. Custody of legitimate child. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has

abandoned his family, the mother is entitled thereto. En. March 21, 1872. Am'd. 1873-4, 194.

Cal. Rep. Cit. 95, 378; 130, 382; 134, 116; 137, 276; 142, 426.

Relinquishing right to child's earnings: Sec. 211, infra.

Property of child, parent, as such, has no control of: Sec. 202, infra.

Guardian, appointment of: See post, secs. 241 et seq.

§ 198. Husband and wife living separate, neither to have superior right to custody of children. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, En. March 21, 1872.

Cal. Rep. Cit. 137, 276; 142, 426.

Custody of child in divorce causes: See ante, sec. 138.

§ 199. When husband or wife may bring action for the exclusive control of children. Decree in such cases. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require. En. March 21, 1872.

Cal. Rep. Cit. 109, 649.

Compare with sec. 214, infra.

Control of children pending divorce proceedings: See ante, sec. 138.

Awarding custody of child—Considerations that should govern the court: Post, sec. 246.

§ 200. Custody of an illegitimate child. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings. En. March 21, 1872.

Mother the heir of illegitimate child: Post, sec. 1388.

§ 201. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child, out

of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit. En. March 21, 1872.

§ 202. Parent cannot control the property of child. The parent, as such, has no control over the property of the child. En. March 21, 1872.

Same principle: Post, sec. 242.

Guardian of minor's estate: See post, secs. 241 et seq.

§ 203. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced. En. March 21, 1872.

Cal. Rep. Cit. 103, 356; 103, 357; 109, 647; 109, 648; 109, 649; 109, 650; 109, 651; 109, 653; 109, 654; 109, 655; 109, 657; 109, 659; 109, 660; 109, 661; 124, 678; 143, 404; 143, 405.

Parental duty: See ante, sec. 196.

Omission to supply a child with necessaries is a misdemeanor, and desertion is punished by imprisonment: Pen. Code, secs. 270, 271.

§ 204. When parental authority ceases. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of a child; or,

3. Upon its attaining majority. En. March 21, 1872.

Cal. Rep. Cit. 109, 649; 119, 601; 142, 426; 143, 403. Subd. 3—119, 601.

§ 205. Remedy when a parent dies without providing for the support of his child. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent. En. March 21, 1872.

Cal. Rep. Cit. 109, 649.

§ 206. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding. En. March 21, 1872.

Cal. Rep. Cit. 124, 54.

Mother supporting children: Ante, sec. 196.
Wife supporting husband: Ante, sec. 176.

§ 207. When a parent is liable for necessaries supplied to a child. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent. En. March 21, 1872.

Cal. Rep. Cit. 109, 649; 145, 716; 145, 717.

Infant liable on contract for necessaries: See ante, sec. 36.

§ 208. When a parent is not liable for support furnished his child. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause. En. March 21, 1872.

Cal. Rep. Cit. 125, 72.

§ 209. Husband not bound for the support of his wife's children by a former marriage. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services. En. March 21, 1872.

Cal. Rep. Cit. 74, 321; 124, 70; 125, 70.

§ 210. Compensation and support of adult child. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor. En. March 21, 1872.

§ 211. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment. En. March 21, 1872.

Cal. Rep. Cit. 115, 151.

§ 212. Wages of minors. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages. En. March 21, 1872. Am'd. 1873-4, 194.

§ 213. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child. En. March 21, 1872.

Residence, husband's right to change: See ante, sec. 156.

§ 214. Wife in certain cases may obtain custody of minor children. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section 246. En. March 21, 1872.

See act of March 7, 1874, relative to orphans and abandoned children: Stats. 1873-4, p. 297. Am'd. 1877-8, p. 82.

Custody of child without divorce of parents: See ante, sec. 199.

Custody of child pending divorce proceedings: See sec. 138.

§ 215. Child legitimized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. En. Stats. 1873-4, 195.

Cal. Rep. Cit. 57, 491; 96, 563; 96, 570; 96, 572.

CHAPTER II.

ADOPTION.

§ 221. Child may be adopted.
§ 222. Who may adopt.
§ 223. Consent of wife necessary.
§ 224. Consent of child's parents. Children in orphan asylums.
§ 225. Consent of child.
§ 226. Proceedings on adoption.
§ 227. Judge's order; where filed.
§ 228. Effect of adoption.
§ 229. Effect on former relations of child.
§ 230. Adoption of illegitimate child.

§ 221. Child may be adopted. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter. En. March 21, 1872.

Cal. Rep. Cit. 75, 381; 81, 441; 81, 446; 102, 79.

§ 222. Who may adopt. The person adopting a child must be at least ten years older than the person adopted. En. March 21, 1872. Am'd, 1873-4, 195.

Cal. Rep. Cit. 98, 537.

§ 223. Consent of wife necessary. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent. En. March 21, 1872. Am'd. 1873-4, 195.

Cal. Rep. Cit. 98, 53[illegible]; 102, 79.

§ 224. Consent of child's parents. Children in orphan asylums. A legitimate child cannot be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and for either cause divorced, or adjudged to be habitually intemperate in the use of intoxicants, or who has been judicially deprived of the custody of the child on account of cruelty or neglect; neither is the consent of anyone necessary in the case of any abandoned child; provided, however, that any such child, being a half orphan, and kept and maintained in any orphan asylum in

§224 Am'd. p. 400

this state for more than two years, may be adopted with the consent of the manager of such orphan's home without the consent of the parent unless such parent has paid toward the expenses of maintenance of such half orphan at least a reasonable sum during the said time, if able to do so. Any child deserted by both parents, or left in the care and custody of another by its parent or parents, without any agreement or provision for its support, for the period of one year, is deemed to be an abandoned child within the meaning of this section, and where the parent is a nonresident of this state such child may without the consent of either parent be adopted with the consent of the managers of such home whenever it has been left in such home for more than one year. En. March 21, 1872. Am'd. 1891, 24; 1893, 112; 1895, 39; 1903, 114.

Cal. Rep. Cit. 57, 491; 98, 537; 102, 81; 106, 379; 106, 381.

§ 225. **Consent of child.** The consent of a child, if over the age of twelve years, is necessary to its adoption. En. March 21, 1872.

Cal. Rep. Cit. 98, 537.

§ 226. **Proceedings on adoption.** Any person desiring to adopt a child may, for that purpose, petition the superior court of the county in which the petitioner resides. The person adopting a child, and the child adopted, and the other persons, if within or residents of this state, whose consent is necessary, must appear before the court, and the necessary consent must thereupon be signed and an agreement executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this state, then their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three, must be filed in said superior court at the time of the application for adoption. En. March 21, 1872. Am'd. 1875-6, 69; 1880, 4; 1905, 555.

§226 Am'd. 401

The first two sentences of this section have been recast with the design of making the proceeding for adoption judicial, thereby supporting it by the same intendments which are indulged in favor of other proceedings conducted in courts of record.—Code Commissioner's Note.

§ 227. **Judge's order; where filed.** The court must examine all persons appearing before it pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, it must make

an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. The petition, agreement, consent, and order must be filed and registered in the office of the county clerk in the same manner as papers in other special proceedings. En. March 21, 1872. Am'd. 1905, 556.

The change consists in the substitution of the word "court" for the word "judge," and in the addition of the last sentence, said sentence being added for the purpose of making it clear that the papers constituting part of the adoption or of the proceeding therefor, must be filed and preserved by the clerk.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 491; 75, 218; 75, 219; 98, 536; 98, 537; 98, 538; 98, 547; 102, 77; 102, 80; 106, 565; 106, 566; 131, 470; 140, 469; 141, 406.

§ 228. Effect of adoption. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. En. March 21, 1872. Am'd. 1873-4, 195.

Cal. Rep. Cit. 57, 491; 75, 219; 106, 379; 131, 182; 140, 469.

§ 229. Effect on former relations of child. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it. En. March 21, 1872.

Cal. Rep. Cit. 106, 379.

§ 230. Adoption of illegitimate child. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption. En. March 21, 1872.

Cal. Rep. Cit. 52, 86; 52, 87; 56, 419; 57, 491; 75, 381; 75, 382; 81, 421; 81, 441; 81, 442; 81, 444; 81, 445; 81, 446; 81, 447; 81, 457; 96, 557; 96, 558; 96, 559; 96, 560; 96, 572; 96, 573; 96, 576; 96, 582; 96, 591; 96, 592; 96, 594; 96, 595; 102, 262; 127, 434; 135, 386; 135, 388; 136, 395; 136, 396; 137, 299; 137, 300; 142, 160; 142, 168; 142, 169; 142, 170; 142, 171; 142, 172.

TITLE III.

GUARDIAN AND WARD.

§ 236. Guardian, what.
§ 237. Ward, what.
§ 238. Kinds of guardians.
§ 239. General guardian, what.
§ 240. Special guardian, what.
§ 241. Appointment by parent.
§ 242. No person guardian of estate without appointment.
§ 243. Appointment by court.
§ 244. Same.
§ 245. Jurisdiction.
§ 246. Rules for awarding custody of minor.
§ 247. Powers of guardian appointed by court.
§ 248. Duties of guardian of the person.
§ 249. Duties of guardian of estate.
§ 250. Relation confidential.
§ 251. Guardian under direction of court.
§ 252. Death of a joint guardian.
§ 253. Removal of guardian.
§ 254. Guardian appointed by parent, how superseded.
§ 255. Suspension of power of guardian.
§ 256. Release by ward.
§ 257. Guardian's discharge.
§ 258. Insane persons.

§ 236. Guardian, what. A guardian is a person appointed to take care of the person or property of another. En. March 21, 1872.

Cal. Rep. Cit. 117, 664.

§ 237. **Ward, what.** The person over whom or over whose property a guardian is appointed, is called his ward. En. March 21, 1872.

§ 238. **Kinds of guardians.** Guardians are either:

1. General; or.
2. Special. En. March 21, 1872.

Testamentary guardians: See sec. 241.

Guardians ad litem: See Code Civ. Proc., secs. 372, 373.

§ 239. General guardian, what. A general guardian is a guardian of the person or of all the property of the ward within this state, or of both. En. March 21, 1872.

§ 240. Special guardian, what. Every other is a special guardian. En. March 21, 1872.

§ 241. Appointment by parent. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent;

2. If the child be illegitimate, by the mother. En. March 21, 1872. Am'd. 1873-4, 195.

Cal. Rep. Cit. 84, 596; 84, 597; 109, 646; 109, 647; 128, 218; 130, 383.

Bond of testamentary guardian: Code Civ. Proc., sec. 1758.

§ 242. No person guardian of estate without appointment. En. March 21, 1872. Rep. 1905, 728.

The provisions of the above sections, relating to guardian and ward, are controlled by sections 1747, 1758, and 1793 of the Code of Civil Procedure. They are, therefore, unnecessary and misleading.—Code Commissioner's Note.

§ 243. Appointment by court. En. March 21, 1872. Am'd. 1873-4, 196; 1880, 4. Rep. 1905, 728.

See note to § 242, ante.

Cal. Rep. Cit. 84, 596; 109, 646; 109, 647; 109, 649; 128, 218; 130, 383.

Judicial appointment of guardian of minor: See Code Civ. Proc., sec. 1747.

Judicial appointment of guardian of insane or incompetent persons: See Code Civ. Proc., sec. 1763.

Act providing for appointment of guardian of orphans: See post, Appendix, title Infancy.

§ 244. Same. En. March 21, 1872. Am'd. 1880, 4. Rep. 1905, 728.

See note to § 242, ante.

Nonresident wards, appointment of guardian: See Code Civ. Proc., secs. 1793 et seq.

§ 245. Jurisdiction. En. March 21, 1872. Rep. 1905, 728.

See note to § 242, ante.

Control over guardian: See Code Civ. Proc., sec. 1771.

§ 246. Rules for awarding custody of minor. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative.

4. Any parent who knowingly or willfully abandons, or having the ability so to do, fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have the preferred right to the guardianship of such child. En. March 21, 1872. Am'd. 1873-4, 196; 1905, 728.

The change consists in the addition of subdivision 4, which is a codification of the statute of 1873-4, page 297, relating to the care of orphan and abandoned children. The penal provisions of that act are, however, omitted as they do not properly find a place in this Code.—Code Commissioner's Note.

Cal. Rep. Cit. 142, 240. Subd. 1—130, 381. Subd. 3—109, 661.

Custody of children generally, pending divorce: See sec. 138; without divorce: See secs. 199, 214.

Custody of child where parents separated: See ante, sec. 214.

§ 247. Powers of guardian appointed by court. En. March 21, 1872. Rep. 1905, 729.

The subject matter of this section is provided for in section 1753 of the Code of Civil Procedure.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 403.

Cal. Rep. Cit. 117, 644.

Property of ward, control over: See sec. 242.

§ 248. Duties of guardian of the person. En. March 21, 1872. Rep. 1905, 729.

The provisions of these sections are included in sections 1753 and 1770 of the Code of Civil Procedure.—Code Commissioner's Note.

Cal. Rep. Cit. 123, 218; 128, 218; 142, 426; 143, 403.
Compare sec. 251.

§ 249. Duties of guardian of estate. En. March 21, 1872. Am'd. 1873-4, 197; 1880, 5.
Rep. 1905, 729.
See note to § 248, ante.
Cal. Rep. Cit. 117, 644; 121, 472; 124, 157; 134, 116.
Sale of ward's estate: See Code Civ. Proc., secs. 1777 et seq.
Guardian using principal as well as income: See Code Civ. Proc., sec. 1770.

§ 250. Relation confidential. The relation of guardian and ward is confidential, and is subject to the provisions of the title on Trust. En. March 21, 1872.
Cal. Rep. Cit. 116, 391.
Trusts: See post, secs. 2215 et seq.

§ 251. Guardian under direction of court. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court. En. March 21, 1872.
Residence of ward: See sec. 248, ante.

§ 252. Death of a joint guardian. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court. En. March 21, 1872.
Survival of trust: See sec. 2288, post.

§ 253. Removal of guardian. A guardian may be removed by the superior court for any of the following causes:
1. For abuse of his trust;
2. For continued failure to perform its duties;
3. For incapacity to perform its duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the state;
7. In the case of a guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship. En. March 21, 1872. Am'd. 1880, 5.

Cal. Rep. Cit. Subd. 8—143, 409.
Removal of guardian: See Code Civ. Proc., sec. 1801.

§ 254. Guardian appointed by parent, how superseded. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 253;

2. By the solemnized marriage of the ward; or,

3. By the ward's attaining majority. En. March 21, 1872.

Cal. Rep. Cit. Subd. 3—121, 474.

Marriage of ward terminates guardianship: Code Civ. Proc., sec. 1802.

§ 255. Suspension of power of guardian. The power of a guardian appointed by a court is suspended only:

1. By order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

3. The guardianship over the person of the ward, by the marriage of the ward. En. March 21, 1872. Am'd. 1873-4, 197.

Cal. Rep. Cit. Subd. 2—143, 230. Subd. 3—143, 234.

Marriage of ward terminates guardianship: Code Civ. Proc., sec. 1802.

§ 256. Release by ward. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence. En. March 21, 1872.

Cal. Rep. Cit. 143, 229.

§ 257. Guardian's discharge. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority. En. March 21, 1872.

Cal. Rep. Cit. 143, 229; 143, 234.

Resignation of guardian: See Code Civ. Proc., sec. 1801.

§ 258. Insane persons. En. March 21, 1872. Am'd. 1880, 5. Rep. 1905, 729.

This section, which prescribed the mode of placing insane persons in the asylum, has been supplanted by later legislation (see statute of 1897, page 311, relative to the establishment of a lunacy commission, and Political Code, sections 2136 to 2199).—Code Commissioner's Note.

Guardianship of lunatic: See Code Civ. Proc., sec. 1763.

TITLE IV.

Title repealed and new title substituted March 21, 1905. Stats. 1905, 560.

MASTER AND APPRENTICE.

§ 264. Minors, when and to whom may be bound as apprentices.
§ 265. Persons who may bind minor with his consent.
§ 266. Indenture of apprenticeship, how to be executed and what to contain.
§ 267. Jury trial as to facts of incapacity, etc., of parent.
§ 268. Apprenticing of poor and homeless minors.
§ 269. Master to keep apprentice within the state, to deliver him money and other property therein.
§ 270. Duty to inquire into the treatment of minor apprentices.
§ 271. Hearing of complaints of apprentices.
§ 272. Power of court to discharge apprentice from apprenticeship.
§ 273. Liability of master for breach of his covenant.
§ 274. Liability of, and proceedings against, apprentice guilty of gross misbehavior.
§ 275. Enticing away apprentices and liability for.
§ 276. Release of master removing out of state or quitting business.

§ 264. Minors, when and to whom may be bound as apprentices. Every minor of the age of fourteen years or upwards may be bound by indenture as an apprentice to any mechanical trade or art or the occupation of farming to the age of eighteen years, if a female, or to the age of twenty-one years, if a male. En. March 21, 1872. Rep. 1905, 560. En. 1905, 560.

264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276. These sections codify the statute of 1875-6, page 842, relative to masters and apprentices, as amended in 1880, page 28, the old chapter being repealed and the provisions of the acts above referred to substituted in place thereof. In this codification section 1 of the statute has been made section 264; sections 2 and 7, 265; sections 3, 4, 5, and 12, 266; section 6, 267; section 8 and the latter part of section 9, 268; the first clause of section 9 and all of section 10, 269; section 11, 270; section 13, 271; section 14, 272; section 15, 273; sections 16 and 17, 274; section 19, 275; section 20, 276. It will be observed that section 18 of the statute has been omitted. It purports to make the parties to an indenture of apprenticeship liable to the master for any breach thereof. The theory of the statute is that the contract of apprenticeship is not made by the minor, but by his parent or guardian. If such parent or guardian is made personally liable on the contract, a parent will rarely, and the guardian almost never, enter into it. It seems sufficient that such parent or guardian be made answerable for the cost of the proceeding brought by the master to be released from the indenture, as provided for in section 274. The master on his part is not absolutely bound, because he may, if he wishes to remove from the state, or to quit his trade or business, apply to be released from his contract, and he may take like action whenever the apprentice is guilty of neglect, refusal to do his duty, or gross misbehavior. These considerations seem to furnish good reason for the omission of the section.—Code Commissioner's Note.

Aiding apprentice to run away a misdemeanor: Pen. Code, sec. 646.

See Act of April 3, 1876, relative to apprentices: Post, Appendix title Apprentices.

Master and servant generally: See post, sec. 2009.

§ 265. Persons who may bind minor with his consent. A minor, with his consent, may be bound by his father, or, in case of his death or incompetency, or where he has willfully abandoned his family for one year without making suitable provision for their support, or is habitually intemperate in the use of intoxicants, or is a vagrant, then by his mother or legal guardian. An executor, who, by the will of the father, is directed to bring up a child to a trade or calling, has power to bind by indenture in like manner as the father might have done, if living. If a child is illegitimate, the mother alone has power to bind him. If a minor has no parent or guardian competent to act for him, he may bind himself, with the approval of the superior court of the county wherein he resides. If the mother of a minor, whether legitimate or illegitimate, marries after his birth, she cannot bind him without the approval of such superior court. En. March 21, 1872. Am'd. 1880, 5. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 266. Indenture of apprenticeship, how to be executed and what to contain. Every indenture of apprenticeship must be executed in duplicate, must state the age of the minor, and, except as hereinafter provided, must show that he consented thereto, must be signed by him and the person binding and the master, and when made with the approval of the superior court, a certified copy of the order of approval must be attached to the indenture. One copy of the indenture must be delivered to the master and the other kept for the use of the minor by his parent or guardian when executed by him, or, when made with the approval of the court, it must be filed and deposited with the clerk for safekeeping for the use of the minor. No indenture binds the minor after the death of the master, but thereafter the minor may be bound anew. Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void. En. March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 267. Jury trial as to facts of incapacity, etc., of parent. Facts of incapacity, desertion, habitual intemperance, and vagrancy must be decided in said court by a jury, before the indenture can take effect, and an indorsement on the

indenture, under seal of the court, that the charge or charges are proved, is sufficient evidence of the mother's power to give such consent; but if the jury does not find the charge or charges to be true, the person at whose instance such proceedings may have been had must pay all costs attending the same. En. March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 268. Apprenticing of poor and homeless minors. When a minor is poor, homeless, chargeable to the county or state, or an outcast who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority. Proceedings therefor may be instituted by any citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted, among other things, a clause to the following effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling, and, at the expiration of his term of service, must give him or her fifty dollars in gold, and two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold, En, March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 269. Master to keep apprentice within the state, to deliver him money and other property therein. A master must not remove his apprentice out of the state, and must pay and deliver to him the money, clothes, and other property to which he is entitled under the indenture of apprenticeship, to be held by him as his sole property. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 270. Duty to inquire into the treatment of minor apprentices. Parents and guardians and such court must, from time to time, inquire into the treatment of children bound by them respectively, or with their approval, and the judges of such courts are responsible for the charge of apprentices bound by a court or with its approval, and must defend them from all cruelty, neglect, breach of

contract, or misconduct on the part of their masters. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 271. Hearing of complaints of apprentices. The superior court must hear the complaints of apprentices who reside within the county against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship, and the court must hear and determine such case and make such order therein as will relieve the party in the future. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 272. Power of court to discharge apprentice from apprenticeship. The superior court has power, where circumstances require it, to discharge an apprentice from his apprenticeship, and, in case any money or other thing has been paid or contracted to be paid by either party in relation to the apprenticeship, the court must make such order concerning the same as seems just and reasonable. If the apprentice so discharged was originally bound by the superior court, it must, if found necessary, again bind such minor, if under age. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante,

§ 273. Liability of master for breach of his covenant. Every master is liable to an action on the indenture for a breach of any covenant thereof on his part. All damages recovered in such action, after deducting necessary charges in its prosecution, belong to the minor, and must be applied and appropriated to his use by the person recovering it in his behalf, and must be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If no action is brought during the minority of the apprentice, it may be commenced by him in his own name at any time within two years after his coming of age. En. March 21, 1872. Am'd. 1880, 6. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 274. Liability of, and proceedings against, apprentice guilty of gross misbehavior. An apprentice who is guilty of any gross misbehavior, or refusal to do his duty, or will-

ful neglect thereof, is liable to the complaint of his master in the superior court of the county wherein the apprentice resides. Such complaint must set forth the circumstances of the case, and have attached thereto a citation, signed by the clerk of the court requiring him and all persons who have covenanted in his behalf to appear and answer the complaint within ten days after the service thereof. The complaint and citation must be served in the manner required for serving civil process. When the parties have answered, or when, though they have not answered, the time therefor allowed after the service of the complaint has expired, the court must proceed to hear and determine the cause, and, if the evidence warrants it, may render judgment that the master be discharged from the contract of apprenticeship and for costs of suit. Such costs may be recovered from the parent or guardian of the minor, if there is any who signed the indenture, and execution therefor may issue accordingly. If there is no parent or guardian liable for such cost, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he arrives at full age. He is also liable to the master in an action on the indenture for the breach of any covenant on the part of the apprentice contained therein, committed before the master was discharged from the indenture. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 275. Enticing away apprentices and liability for. It is unlawful for any person to entice, counsel, or persuade to run away any apprentice, or to harbor, or conceal him, knowing him to be a runaway. Any party so offending is guilty of a misdemeanor, and may be fined not more than one hundred dollars, to be recovered by the master in any court having jurisdiction. En. March 21, 1872. Rep. 1905, 560. En. 1905, 563.

See note to § 264, ante.

§ 276. Release of master removing out of state or quitting business. Whenever any master wishes to remove out of the state, or to quit his trade or business, he must appear with his apprentice before the superior court of the county in which the latter resides, and if the court is satisfied that the master has done justice to the apprentice for the time he has had charge of him, the court has power to discharge the master from the indenture and to again bind the apprentice, if necessary. En. March 21, 1872. Rep. 1905, 560. En. 1905, 563.

See note to § 264, ante.

PART IV.

CORPORATIONS.

Title I. General Provisions Applicable to all Corporations, §§ 283-403.
II. Insurance Corporations, § 414.
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XII. Religious, Social, and Benevolent Corporations, §§ 593-605.
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XVI. Land and Building Corporations, §§ 639-648½.
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TITLE I.

GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.

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II. Corporate Stock, §§ 322-349.
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CHAPTER I.

FORMATION OF CORPORATIONS.

Article I. Corporations Defined and how Organized, §§ 283-300a.
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ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

§ 283. Corporation defined.
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§ 285. Private, how formed.
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§ 288. Existing corporations not affected.
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§ 292. Articles subscribed and acknowledged.
§ 293. Prerequisite to filing articles. Amounts to be subscribed to be fixed.
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§ 295. Oath of officer to subscription of stock and payment of ten per cent.
§ 296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence.
§ 297. Copy of articles prima facie evidence.
§ 298. Who are members and who stockholders of a corporation.
§ 299. Filing articles of incorporation.
§ 300. Banking corporations may elect to have capital stock.
§ 300a. Change of name; filing copy of decree.

§ 283. Corporation defined. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes. En. March 21, 1872.

Cal. Rep. Cit. 51, 410; 117, 177.

Powers of corporations: See post, secs. 354 et seq.

Existence of corporations limited to fifty years: Secs. 290, 401, post.

§ 284. Kinds of. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private. En. March 21, 1872. Am'd. 1873-4, 197.

Cal. Rep. Cit. 51, 409; 117, 121; 134, 478; 144, 334.

§ 285. Private, how formed. Private corporations may be formed by the voluntary association of any three or

more persons in the manner prescribed in this article. A majority of such persons must be residents of this state. En. March 21, 1872. Am'd. 1873-4, 197. Am'd. 1905, 502.

Cal. Rep. Cit. 128, 260.

See Stats. 1858, p. 264, sec. 2; id. 57; 1850, 347; 1851, 523; 1861, 567; 607, 1853, 87, 169; 1857, 75; 1859, 281; 1862, 199; 1866, 743, 752; 1863, 624.

Formation of corporation to be under general laws: Const. Cal. 1879, art. 12, sec. 1.

§ 286. For what purpose private corporations are formed. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. En. March 21, 1872. Am'd. 1873-4, 198.

Cal. Rep. Cit. 52, 60; 53, 279; 109, 590; 113, 531; 144, 594.

Corporations to give bonds required by law: See post, Appendix, title Bonds.

Act for formation of chambers of commerce, boards of trade, mechanics' institutes and other kindred protective associations: See post, Appendix, title Chambers of Commerce.

Co-operative associations: See post, Appendix, title Co-operative Associations.

§ 287. How corporations may continue their existence under this code. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of

the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby. En. March 21, 1872. Am'd. 1873-4, 198.

Cal. Rep. Cit. 57, 533; 105, 552; 109, 579; 109, 586; 111, 65; 119, 342; 122, 336; 122, 337; 122, 339.

§ 288. Existing corporations not affected. No corporation formed or existing before twelve o'clock noon, of the day upon which this code takes effect, is affected by the provisions of part IV, of division first of this code, unless such corporation elects to continue its existence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section. En. March 21, 1872.

Cal. Rep. Cit. 52, 141; 60, 310; 105, 550; 105, 552; 105, 553; 109, 579; 109, 580; 109, 581; 109, 582; 109, 583; 111, 65; 119, 341; 119, 342; 122, 337.

§ 289. Name of instrument creating corporation. The instrument by which a private corporation is formed is called "Articles of Incorporation." En. March 21, 1872.

Cal. Rep. Cit. 128, 260.

§ 290. Articles of incorporation, what to contain. Articles of incorporation must be prepared, setting forth:

1. The name of the incorporation.

2. The purpose for which it is formed.

3. The place where its principal business is to be transacted.

4. The term for which it is to exist, not exceeding fifty years.

5. The number of its directors or trustees, which shall not be less than three, and the names and residence of those who are appointed for the first year; provided, that the corporate powers, business, and property of corporations formed, or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodations of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation, or among the members of such order or organization; and provided, also,

that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the numbers of the directors may be increased or diminished, by a majority of the stockholders of the corporation, to any number not less than three, who must be members of the corporation; whereupon a certificate stating the number of directors must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation; and provided, also, that the corporate powers, business and property of corporations formed or to be formed for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution or by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner provide that certain directors, or a certain number of the board of directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth.

6. The amount of its capital stock, and the number of shares into which it is divided.

7. If there is a capital stock, the amount actually subscribed, and by whom. En. March 21, 1872. Am'd. 1873-4, 199; 1875-6, 70; 1880, 11; 1891, 285; 1900-01, 322; 1905, 502.

Cal. Rep. Cit. 53, 128; 64, 52; 65, 601; 89, 54; 102, 64; 106, 309; 127, 267; 127, 268; 127, 269; 128, 261; 128, 262; 130, 39; 146, 222. Subd. 7—106, 309.

§290a Enact. p. 402

Requisites, particular kinds of corporation: See post, secs. 291, 594.

Limit of corporate existence: See sec. 354.

§ 290½. Corporations not to use the word "trust" as part of corporate name. No corporation hereafter formed shall use the word "'trust" or "trustee" as a part of its corporate name unless it shall be authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depositary or trustee, nor shall any corporation hereafter formed accept or execute any trust unless it shall have complied with all the provisions of "An act authorizing certain corporations to act as executor, and in other capacities, and to provide for and regulate the administration of trusts by such corporation," approved April 6th, 1891, and the amendment thereto approved, April 1st, 1897. En. Stats. 1905, 251.

"An act authorizing certain corporations to act as executor," etc.; See Appendix, p. 702.

§ 291. Certain corporations to state further facts in articles. The articles of incorporation of any railroad, wagon road, or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed;

2. The place from and to which it is intended to be run, and all the intermediate branches;

3. The estimated length of the road or telegraph line;

4. That at least ten per cent of the capital stock subscribed has been paid in to the treasurer of the intended corporation. En. March 21, 1872.

Cal. Rep. Cit. 142, 227.

§ 292. Articles subscribed and acknowledged. The articles of incorporation must be subscribed by three or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments or conveyances of real property. En. March 21, 1872. Am'd. 1873-4, 199; 1905, 503.

Cal. Rep. Cit. 80, 353; 97, 278; 97, 280; 128, 260; 128, 261; 128, 263; 130, 39.

§ 293. Prerequisite to filing articles. Amounts to be subscribed to be fixed. Each intended corporation named in section 291, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to-wit:

1. One thousand dollars per mile of railroads;

2. One hundred dollars per mile of telegraph lines;

3. Three hundred dollars per mile of wagon roads. En. March 21, 1872.

Cal. Rep. Cit. 53, 128.

§ 294. Prerequisite to filing articles of corporations for profit. Before the articles of incorporation of any corporation referred to in the preceding section are filed, there must be paid for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent of the amount subscribed. En. March 21, 1872.

§ 295. Oath of officer to subscription of stock and payment of ten per cent. Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent thereof actually paid to a treasurer for the benefit of the corporation. En. March 21, 1872.

Signing fictitious name: Pen. Code, sec. 557.

§ 296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk with the secretary of state, and the affidavit mentioned in the last section where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation, otherwise stated, or in this code otherwise specially provided; provided, however, that the secretary of state shall not file any copy of the copy of any articles, or issue any certificate of incorporation to any corporation, which articles set forth the corporate name of any corporation heretofore organized in this state, or file any copy of any articles, or issue any certificate of incorporation to any corporation existing at the time of filing said articles, which articles set forth a name so closely resembling the name of such corporation as will tend to deceive. En. March 21, 1872. Am'd. 1873-4, 199; 1900-01, 629.

Cal. Rep. Cit. 72, 382; 93, 39; 102, 62; 111, 135; 128, 262; 130, 38; 142, 281; 146, 222.

§297a Enact.

§ 297. Copy of articles prima facie evidence. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated. En. March 21, 1872. Am'd. 1873-4, 200; 1895, 50.

Cal. Rep. Cit. 67, 488; 72, 382.

§ 298. Who are members and who stockholders of a corporation. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members. En. March 21, 1872.

Cal. Rep. Cit. 109, 588; 115, 593.

§ 299. Filing articles of incorporation. No corporation hereafter formed must purchase, locate, or hold property,

in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days

by the general law and this section; provided, that all corporations are liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same. En. March 21, 1872. Rep. 1873-4, 200. En. Stats. 1875-6, 71. Am'd. 1877-8, 76; 1880, 13; 1905, 556.

The change consists in the insertion of the words "other than the county in which its original articles of incorporation are filed" after "state."—Code Commissioner's Note.

Cal. Rep. Cit. 67, 487; 73, 601; 73, 602; 77, 72; 80, 69; 80, 71; 80, 335; 80, 336; 83, 17; 97, 274; 108, 90; 108, 91; 111, 135; 111, 137; 111, 138; 120, 178; 120, 179; 120, 180; 120, 181; 146, 649; 146, 651; 146, 652; 147, 753.

Right to purchase estate: See post, sec. 354.

§ 296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk with the secretary of state, and the affidavit mentioned in the last section where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required

C. C., 1906, new.

§ 297a. Whenever the articles of incorporation of any corporation have been, or may hereafter be, destroyed by conflagration or other public calamity, a copy of the certified copy of the articles of incorporation of such corporation filed in the office of the secretary of state pursuant to the provisions of section two hundred and ninety-six of this code, duly certified by such secretary of state, may be filed in the office of the county clerk of the county where such articles of incorporation were on file at the time of their loss or destruction. Any such copy filed pursuant to this section shall have the same force and effect as the document so lost or destroyed. [In effect June 18, 1906.]

§ 297. Copy of articles prima facie evidence. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated. En. March 21, 1872. Am'd. 1873-4, 200; 1895, 50.

§297a Enact.

Cal. Rep. Cit. 67, 488; 72, 382.

§ 298. Who are members and who stockholders of a corporation. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members. En. March 21, 1872.

Cal. Rep. Cit. 109, 588; 115, 593.

§ 299. Filing articles of incorporation. No corporation hereafter formed must purchase, locate, or hold property,

in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquires any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies filed with the several county clerks, and certified copies thereof, have the same force and effect in evidence as the originals. Any corporation failing to comply with the provisions of this section cannot maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, are filed at the places directed by the general law and this section; provided, that all corporations are liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same. En. March 21, 1872. Rep. 1873-4, 200. En. Stats. 1875-6, 71. Am'd. 1877-8, 76; 1880, 13; 1905, 556.

The change consists in the insertion of the words "other than the county in which its original articles of incorporation are filed" after "state."—Code Commissioner's Note.

Cal. Rep. Cit. 67, 487; 73, 601; 73, 602; 77, 72; 80, 69; 80, 71; 80, 335; 80, 336; 83, 17; 97, 274; 108, 90; 108, 91; 111, 135; 111, 137; 111, 138; 120, 178; 120, 179; 120, 180; 120, 181; 146, 649; 146, 651; 146, 652; 147, 753.

Right to purchase estate: See post, sec. 354.

§ 300. **Banking corporations may elect to have capital stock.** Every corporation that has been or may be created under the general laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of chapter I, article I, of the Civil Code, relating to the formation of corporations: provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the president of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock; and provided, further, that no bank in this state shall ever pay any dividend, upon so-called guaranty notes nor upon any stock except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors, to the extent thereof. En. Stats. 1877-8, 77.

Cal. Rep. Cit. 56, 349; 74, 600; 74, 602.

§ 300a. Change of name; filing copy of decree. Every corporation which has changed its name under the provisions of sections 1275, 1276, 1277, 1278 and 1279, of the Code of Civil Procedure, must file in the office of the secretary of state a certified copy of the decree of the court, changing such name. En. Stats. 1903, 256.

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS, AND MEETINGS.

§ 301. Adoption of by-laws, when, how, and by whom.
§ 302. Election of directors; notice of.
§ 303. By-laws may provide for what.
§ 304. By-laws to be copied and open to public inspection. Amendment of.
§ 305. Powers of directors of corporations.
§ 306. Directors must be elected and by-laws adopted at first meeting. (Repealed.)
§ 307. Elections, how conducted.
§ 308. Organization of board of directors, etc.
§ 309. Dividends to be made from surplus profits. Increase and reduction of capital stock.
§ 310. Removal of directors.
§ 311. Justice of the peace may order meeting when.
§ 312. Majority of capital stock must be represented at elections.
§ 312. Corporations; election in, majority of stock must be represented; election set aside, when and by whom.
§ 313. Stock, how represented.
§ 314. Election may be postponed.
§ 315. New election may be ordered by the court.
§ 316. False certificate, report, or notice to make officers liable.
§ 317. Meeting by consent to be valid.
§ 318. Proceedings at meeting to be binding.
§ 319. Meetings, where held.
§ 320. Special meetings, how called.
§ 321. Certain books to be open for inspection.
§ 321a. Corporation may change its principal place of business.
§ 321b. Stockholders' meetings, who may vote at, proxies.

§ 301. Adoption of by-laws, when, how, and by whom. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock,

shall be effectual to adopt a code of by-laws without a meeting for that purpose. En. March 21, 1872. Am'd. 1873-4, 200.

Cal. Rep. Cit. 74, 574; 109, 588; 116, 414; 116, 415; 117, 162; 145, 702.

Repeal and amendment of by-laws: Post, sec. 304.

§ 302. Election of directors; notice of. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given as prescribed in section three hundred and one. En. March 21, 1872. Am'd. 1905, 557.

The change consists in the omission of the words "and the right to vote determined" after "given." The right to vote is controlled by section 307.—Code Commissioner's Note.

Cal. Rep. Cit. 93, 36; 146, 222.

Postponing election: Post, sec. 314.

§ 303. By-laws may provide for what. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors.

2. The number of stockholders or members constituting a quorum.

3. The mode of voting by proxy.

4. The qualifications and duties of directors, and also the time of their annual election, and the mode and manner of giving notice thereof.

5. The compensation and duties of officers.

6. The manner of election and tenure of office of all officers other than the directors; and

7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

8. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, shall be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; provided, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an

order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county. En. March 21, 1872. Am'd. 1873-4, 201; 1889, 365.

Cal. Rep. Cit. 93, 38; 93, 39; 96, 82; 104, 653; 109, 599. Subd. 1—130, 347. Subd. 4—121, 208. Subd. 5—121,208.

By-laws of: Post, secs. 300, 308, 323, 344, 599.

§ 304. By-laws to be copied and open to public inspection. Amendment of. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be open to the inspection of the public during office hours each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it must be copied in the book of by-laws with the original by-laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied or stated as hereinbefore required, no by-law, nor any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof. En. March 21, 1872. Am'd. 1873-4, 201; 1885, 130; 1905, 557.

Cal. Rep. Cit. 89, 54.

The provisions of the present section, declaring that no by-law or any amendment thereof shall take effect until copied in the book of by-laws, is amended so as to permit by-laws and amendments thereof, which have been duly passed, to be treated as valid and enforceable against the corporation and persons having notice thereof, regardless of whether or not they have been copied into the proper book. It has often happened that by-laws have been published and generally acted upon by the corporation, and by others, and then their effect

has been sought to be avoided on account of the failure of the proper officer to perform his duty of copying them as the Code directs. The change consists in the addition of the last sentence.—Code Commissioner's Note.

§ 305. Powers of directors of corporations. The corporate powers, business and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than three directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith, the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases residents of this state. Directors of corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. En. March 21, 1872. Am'd. 1875-6, 71; 1900-01, 308; 1905, 503.

Cal. Rep. Cit. 78, 632; 81, 234; 93, 36; 93, 39; 94, 549; 111, 116; 118, 138; 121, 208; 126, 417; 127, 267; 127, 269; 130, 349; 130, 351; 132, 652; 146, 222.

§ 306. Directors must be elected and by-laws adopted at first meeting. (Repealed.) En. March 21, 1872. Am'd. 1873-4, 202. Rep. 1889, 365.

§ 307. Elections, how conducted. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock

shall equal, or to distribute them on the same principle among as many candidates as he shall think fit.

The provisions of this section, so far as it relates to cumulative voting, shall apply to all corporations and associations doing business in this state, having a capital stock or shares of stock, and electing directors by a meeting of stockholders held in this state, whether such corporations or associations are organized under the laws of this state or not and no election for directors of any corporation or association, doing business in this state, and electing directors in this state, shall be valid, if the right of a stockholder to cumulate his shares as herein provided shall be denied.

In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all the candidates.

In any case the director receiving the highest number of votes shall be declared elected.

The provisions of this section, so far as it relates to cumulative voting, shall not apply to literary, religious, scientific, social or benevolent societies, having no capital stock or shares unless it shall be so provided in their by-laws or rules. En. March 21, 1872. Am'd. 1873-4, 202; 1877-8, 78; 1887, 95; 1903, 253.

Cal. Rep. Cit. 93, 36; 103, 363; 109, 589; 109, 597; 115, 590; 115, 609; 127, 683.

§ 308. Organization of board of directors, etc. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act. En. March 21, 1872.

Cal. Rep. Cit. 78, 292; 78, 632; 93, 38; 93, 39; 94, 549; 96, 82; 103, 363; 121, 308; 127, 267; 130, 348; 130, 349; 131, 659; 145, 364.

§ 309. Dividends to be made from surplus profits. Increase and reduction of capital stock. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they create any debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock,

except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitation is a bar to any suit against such directors for any sums for which they are liable by this section; provided, however, that where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two-thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division entitle them. All conveyances made by the corporation in pursuance of this section must be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein prohibits a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence. En. March 21, 1872. Am'd. 1891, 468; 1905, 558.

The change consists in the omission of the words, "nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock," where those words first occur, and in the omission of the words "in the event of its dissolution," after "thereof." The reason for the omission of the words first above alluded to is that by some clerical error they occur twice in the section. The words "in the event of its dissolution" are omitted because their presence makes it impossible to enforce the liability against the directors unless the corporation is first dissolved, which could not have been the intention of the legislature.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 602; 81, 384; 81, 387; 81, 389; 81, 390; 81, 396; 81, 397; 90, 135; 90, 136; 90, 139; 90, 140; 90, 141; 90, 142; 93, 309; 93, 310; 93, 311; 109, 596; 116, 415; 124, 149; 125, 412; 127, 674; 135, 482.

Increasing and diminishing capital stock: See post, sec. 359.

Penalties: See Pen. Code, secs. 560, 563, 564, 569, 570.

Actions against directors: See Code Civ. Proc., sec. 359.

§ 310. Removal of directors. The board of directors may be removed from office by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section three hundred and one of this title, unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting. En. March 21, 1872. Am'd. 1905, 558.

The amendment, while it authorizes the removal of the whole board of directors by a two-thirds vote of the members or stockholders, denies the power to remove less than the whole number by such vote. The reason for this is that by the system of cumulative voting sanctioned by section 307, a minority may obtain representation in the board of directors; if so, a director elected to represent a minority of one-third ought not to be removed by the subsequent vote of the other two-thirds, and the system of cumulative voting and minority representation thus made ineffective. The first sentence only is changed.—Code Commissioner's Note.

Cal. Rep. Cit. 97, 630.

Act to protect stockholders and persons dealing with corporations from misrepresentations of officers: See post, Appendix, title Corporations.

§ 311. Justice of the peace may order meeting when. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an ap-

plication by three or more stockholders or members. En. March 21, 1872. Am'd. 1905, 559.

By the amendment proposed the holders of a majority of the stock, though their number is less than three, are authorized to apply to the justice to issue a warrant for an election. The change consists in the addition of the last sentence.—Code Commissioner's Note.

p. 405 §312 Am'd. n. 403

§ 312. Majority of capital stock must be represented at elections. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof, or a stockholder having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same is held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had—such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 559.

The change consists in the substitution of the words "superior court" in place of "district court," and in the omission of the words "bona fide" before "stockholder." For the purposes of election, a person appearing upon the books of the corporation to be a stockholder should be permitted to vote, and election officers should not be vested with authority to deny such a stockholder the right to vote, or to claim that for some reason he is not a bona fide stockholder. (See Smith v. S. F. & N. P. Ry. Co., 115 Cal. 584.)—Code Commissioner's Note.

This amendment was approved March 21, 1905, and the following amendment of the same section was approved March 22, 1905:

§ 312. Corporations; election in, majority of stock must be represented; election set aside, when and by whom. At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing; provided, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein (in person or by proxy or representative), must be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of a corporation at least ten

days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent (or any) stockholders or members, and may be set aside by petition to the superior court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 787.

This amendment was approved March 22, 1905, the preceding amendment of the same section being approved March 21, 1905.

Cal. Rep. Cit. 67, 533; 93, 36; 93, 39; 103, 363; 104, 652; 109, 588; 109, 589; 109, 599; 112, 63; 115, 589; 115, 590; 115, 594; 115, 609; 127, 683; 133, 47; 146, 224.
Notice of meeting: See ante, sec. 302.

§ 313. Stock, how represented. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator. En. March 21, 1872. Am'd. 1873-4, 203.
Cal. Rep. Cit. 109, 590; 115, 590.

§ 314. Election may be postponed. If from any cause an election does not take place on the day appointed by law or the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section three hundred and ten. En. March 21, 1872. Am'd. 1905, 559.

The design of the amendment is to extend the provisions of the section to all elections howsoever authorized, and for this purpose the words "by law" are inserted after "appointed," "in" is omitted after "appointed," and "or otherwise" are inserted after "by-laws."—Code Commissioner's Note.

§ 315. New election may be ordered by the court. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the

parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 560.

The change consists in the substitution of the words "superior court of the county" for "district court of the district."—Code Commissioner's Note.

Cal. Rep. Cit. 93, 35; 93, 36; 93, 39; 93, 42; 98, 305; 103, 364; 115, 281; 115, 587; 115, 594; 115, 609; 126, 72.

§ 316. False certificate, report, or notice to make officers liable. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. En. March 21, 1872. Am'd. 1873-4, 203.

Liability of officer: Pen. Code, secs. 558, 564.

§ 317. Meeting by consent to be valid. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. En. March 21, 1872.

§ 318. Proceedings at meeting to be binding. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation. En. March 21, 1872.

§ 319. Meetings, where held. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business. En. March 21, 1872.

Changing place of business: See sec. 321.

§ 320. Special meetings, how called. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors. En. March 21, 1872.

Cal. Rep. Cit. 59, 681; 59, 682; 76, 154; 96, 79; 96, 82; 109, 9; 109, 10; 130, 347; 134, 177; 146, 705.

§ 321. Certain books to be open for inspection. Every corporation doing a banking business in this state must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book, containing a list of all stockholders in such corporation, and the number of shares of stock held by each, and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing: First, The names of the directors of such corporation. Second, The number and value of shares of stock held by each director.

The entries on such book, and such notice, shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations, formed or existing before twelve o'clock, noon, of the day on which this code took effect, as well as to those formed after such time. En. Stats. 1875-6, 72.

Cal. Rep. Cit. 89, 54; 140, 105.

§ 321a. Corporation may change its principal place of business. Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the consent in writing, of the holders of two-thirds of the capital stock of the corporation must be obtained and filed in its office. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county, wherein said principal place of business is situated, if there is one published therein; if not in a newspaper of an adjoining county, giving the name of the county or city where it is

situated and that to which it is intended to remove it. Whenever any such change is made, a copy of the resolution or action of the board of directors authorizing the same together with a copy of an affidavit of the publication above required, all duly certified by the president and secretary of the corporation with the corporate seal affixed shall be filed in each office where the original articles of incorporation are, or any copy thereof is required to be filed. This section shall not be construed to require such consent, notice or publication in the case of any such removal from one location to another in the same city, town or village. En. Stats. 1875-6, 73. Am'd. 1903, 254.

§ 321b. Stockholders' meetings, who may vote at; proxies. At all meetings of stockholders of corporations organized under the laws of this state, or in the case of corporations having no capital stock, then at all meetings of the members of such corporation, only the stockholders or members actually present shall be entitled to vote on any proposition, including the election of directors and other officers of the corporation, unless proxies from absent or nonattending stockholders or members shall be held by some person or persons present at such meeting and shall be executed in accordance with the provisions of this section. Every such proxy must be executed in writing by the member or stockholder himself, or by his duly authorized attorney. No proxy heretofore given or made shall be valid after the expiration of eleven months from the passage of this act, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. No proxy hereafter to be given or made shall be valid after the expiration of eleven months from the date of its execution, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which such proxies may be executed. En. Stats. 1905, 22.

CHAPTER II.

CORPORATE STOCK.

Article I. Stock and Stockholders, §§ 322-327.
II. Assessment of Stock, §§ 331-349.

ARTICLE I.

STOCK AND STOCKHOLDERS.

§ 322. Liabilities of stockholders.
§ 323. Certificates, how and when issued.
§ 324. Shares personal property. Transfer of stock. Irrigation stock.
§ 325. Transfer of shares held by married women, etc. Dividends payable to married women.
§ 326. Affidavit or bond may be required before transfer.
§ 327. Contract to relieve directors void.
§ 328. Shares of stock, etc.; duplicates, how issued.

§ 322. Liability of stockholders. Each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to

every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, are not liable under the provisions of this section, by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor or person, or estate represented, is to be deemed the stockholder, as respects such liability. In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state. En. March 21, 1872. Am'd. 1873-4, 203; 1875-6, 73; 1905, 396.

The change consists in the substitution of the language of the first sentence of Section 3 of Article XII of the Constitution in place of the first sentence of the present section. As the section now stands, it is believed to be unconstitutional. (See Larrabee v. Baldwin, 35 Cal. 155.) The words "an equal share" are substituted for "his proportion."—Code Commissioner's Note.

Cal. Rep. Cit. 59, 109; 59, 110; 59, 286; 62, 461; 64, 121; 64, 288; 64, 289; 65, 210; 87, 29; 87, 31; 87, 32; 95, 580; 95, 589; 97, 95; 99, 92; 107, 381; 107, 446; 108, 4; 108, 5; 109, 588; 111, 63; 111, 66; 113, 25; 115, 380; 115, 594; 116, 384; 118, 276; 122, 672; 122, 673; 122, 674; 124, 150; 125, 8; 125, 412; 127, 82; 127, 675; 130, 274; 133, 507; 136, 513; 140, 104; 140, 105; 141, 227; 142, 384; 147, 575.

Act to protect stockholders from fraudulent representations of officers: See post, Appendix, title Corporations.

Liability of stockholders for debts of the corporation is declared in Const. Cal. 1879, art. XII, sec. 3.

§323 Am'd. p. 402

§ 323. Certificates, how and when issued. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon. En. March 21, 1872. Am'd. 1905, 397.

The change consists in the addition of the words "but any certificate issued prior to full payment must show on its face what amount has been paid thereon," the object being to require a certificate issued prior to full payment to show the amount paid thereon.—Code Commissioner's Note.

Cal. Rep. Cit. 82, 603; 96, 329; 101, 79; 135, 583.

§324 Am'd. p. 404

§ 324. Shares personal property. Transfer of stock. Irrigation stock. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by the signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of transfer; provided, however, that any corporation organized for, or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use, may in its by-laws provide that water shall only be so sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-law recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands, and shall pass as an appurtenance thereto. En. March 21, 1872. Am'd. 1895, 118.

Cal. Rep. Cit. 53, 431; 58, 428; 63, 364; 72, 9; 79, 331; 82, 603; 84, 137; 108, 493; 109, 632; 113, 276; 113, 277; 113, 278; 126, 534; 134, 410; 136, 513; 141, 16; 146, 240; 146, 242.

§ 325. Transfer of shares held by married women, etc. Dividends payable to married women. Shares of stock in corporations standing on the books of the corporation in

the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband. En. March 21, 1872. Am'd. 1905, 397.

The amendment is designed to make it clear that shares of stock standing in the name of a married woman are presumed to be her separate property, and that they may be dealt with by her as such, in the absence of proof and notice to the contrary.—Code Commissioner's Note.

§ 326. Affidavit or bond may be required before transfer. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by a judge of the superior court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case or his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation. En. March 21, 1872. Am'd. 1873-4, 205; 1883, 4.

Cal. Rep. Cit. 58, 428.

§ 327. Contract to relieve directors void. Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint stock association from any liability imposed by section three of article twelve of the constitution of California, are hereby declared to be and shall be null and void. En. Stats. 1880, 9.

Cal. Rep. Cit. 84, 422.

§ 328. Shares of stock, etc.; duplicates, how issued. Whenever a certificate of stock or of shares in a corporation organized under the laws of this state has been lost, destroyed or wrongfully withheld, the owner thereof may bring an action against such corporation in the superior court of the county in which is located its principal place of business, for the purpose of obtaining a new or duplicate certificate. If by the books of the corporation the stock stands in the name of a person other than the plaintiff, or if by such books it appears that some other person claims or has some right, title, or interest in, or lien upon, such stock, all such persons must be made parties defendant with the corporation. Summons must be issued and served as in other civil actions, and in addition thereto, the court must direct its clerk to issue and cause to be published, at least once a week for four successive weeks, in some newspaper published in the county, a notice setting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation issuing the stock, the number of the certificate and the number of the shares, the name of the person mentioned as stockholder in the certificate, and notifying all persons claiming said shares, or any of them, or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice not less than thirty days from the first publication thereof, then and there to show cause why a new certificate should not be directed to be issued to the plaintiff, and to set forth their rights in or claim to such shares. If any one appears and answers or intervenes in the action, it must proceed to trial as in other civil cases, and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in such notice, nor within the time allowed by law after the services of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint, and make and file its decision thereon, and thereupon may enter its judgment canceling the lost, destroyed or wrongfully withheld certificate and directing the corporation, upon payment to it of all costs incurred by it in the premises and without costs against the corporation, to issue to the plaintiff a new or duplicate certificate. After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action can ever be maintained by any person against the corporation in reference to said lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation. En. Stats. 1905, 500.

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ARTICLE II.

ASSESSMENTS OF STOCK.

§ 331. Directors may levy assessments.
§ 332. Limitation. How levied.
§ 333. Levy of assessment. Old assessment remaining unpaid.
§ 334. What order shall contain.
§ 335. Notice of asssessment. Form.
§ 336. Publication and service of notice.
§ 337. Delinquent notice. Form.
§ 338. Contents of notice.
§ 339. How published.
§ 340. Jurisdiction acquired, how.
§ 341. Sale to be by public auction.
§ 342. Highest bidder to be the purchaser.
§ 343. In default of bidders, corporation may purchase.
§ 344. Disposition of stock purchased by corporation.
§ 345. Extension of time of delinquent sale.
§ 346. Assessments shall not be invalidated.
§ 347. Action for recovery of stock, and limitation thereof.
§ 348. Affidavits of publication. Affidavits of sale. To be filed.
§ 349. Waiver of sale. Action to recover assessment.

§ 331. Directors may levy assessment. The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent provided herein. En. March 21, 1872. Am'd. 1873-4, 206.

Cal. Rep. Cit. 65, 194; 65, 200; 65, 209; 65, 210; 80, 377; 82, 603; 92, 50; 101, 80; 108, 492; 109, 588; 116, 263; 126, 586; 127, 82; 129, 296; 133, 66; 135, 632; 141, 227; 145, 700; 145, 701; 145, 702; 146, 706.

§ 332. Limitation. How levied. No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper. En. March 21, 1872.

Cal. Rep. Cit. 65, 194; 65, 199; 65, 200; 65, 202; 65, 201; 65, 209; 65, 210; 93, 549; 93, 550; 99, 14; 107, 450; 145, 701; 145, 710. Subd. 1—145, 702; 145, 707; 145, 709.

§ 333. Levy of assessment. Old assessment remaining unpaid. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or

3. The assessment falls within the provisions of either the first, second, or third subdivision of section 332. En. March 21, 1872.

Cal. Rep. Cit. 65, 195; 65, 201.

§ 334. What order shall contain. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent. En. March 21, 1872.

§ 335. Notice of assessment. Form. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business). Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office). En. March 21, 1872.

Cal. Rep. Cit. 101, 81.

§ 336. Publication and service of notice. The notice must be personally served upon each stockholder, or, in

lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county. En. March 21, 1872. Am'd. 1873-4, 206.

§ 337. Delinquent notice. Form. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business). NOTICE.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders as follows: (Names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.) En. March 21, 1872.

Cal. Rep. Cit. 101, 76; 108, 493; 108, 568; 109, 8.

§ 338. Contents of notice. The notice must specify every certificate of stock, the number of shares it repre-

sents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amounts due thereon, together with the fact that the certificates for such shares have not been issued, must be stated. En. March 21, 1872.

Cal. Rep. Cit. 101, 76; 108, 568.

§ 339. How published. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale. En. March 21, 1872.

Cal. Rep. Cit. 101, 76; 108, 493; 108, 568; 108, 569; 129, 296.

§ 340. Jurisdiction acquired, how. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale. En. March 21, 1872.

§ 341. Sale to be by public auction. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment. En. March 21, 1872.

§ 342. Highest bidder to be the purchaser. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs. En. March 21, 1872.

§ 343. In default of bidders, corporation may purchase. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be

bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation. En. March 21, 1872.

Cal. Rep. Cit. 57, 398.

§ 344. Disposition of stock purchased by corporation. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting. En. March 21, 1872.

Cal. Rep. Cit. 57, 398; 72, 33; 109, 588.

§ 345. Extension of time of delinquent sale. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates. En. March 21, 1872.

§ 346. Assessments shall not be invalidated. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew. En. March 21, 1872.

Cal. Rep. Cit. 76, 28; 108, 495; 109, 8.

§ 347. Action for recovery of stock, and limitation thereof. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made. En. March 21, 1872.

Cal, Rep. Cit. 76, 28; 133, 66.

§ 348. Affidavits of publication. Affidavits of sale. To be filed. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates, signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof. En. March 21, 1872. Am'd. 1873-4, 207.

§ 349. Waiver of sale. Action to recover assessment. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof. En. March 21, 1872.

Cal. Rep. Cit. 101, 76; 101, 77; 108, 493; 108, 495; 109, 5; 110, 635; 129, 296; 145, 700; 145, 701.

CHAPTER III.

CORPORATE POWERS.

Article I. General Powers, §§ 354-364.
II. Records, §§ 377, 378.
III. Examination of Corporation, §§ 382-384.
IV. Judgment Against and Sale of Corporate Property, §§ 388-393.

ARTICLE I.

GENERAL POWERS.

§ 354. Powers of corporations.
§ 355. Limitation of powers.
§ 356. Banking expressly prohibited.
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§ 362. Amendment of articles or certificate of incorporation.
§ 363. Corporation may own their lots and buildings. (Repealed.)
§ 363. Correction of erroneous filing of articles of incorporation.
§ 364. Corporations may transfer foreign concessions.

§ 354. Powers of corporations. Every corporation, as such, has power:

1. Of succession by its corporate name, for the period limited; and when no period is limited, perpetually;

2. To sue and be sued in any court;

3. To make and use a common seal, and alter the same at pleasure;

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part;

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

6. To make by-laws, not inconsistent with any existing law, for the management of the property, the regulation of its affairs, and for the transfer of its stock;

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation. En. March 21, 1872.

Cal. Rep. Cit. 52, 59; 56, 63; 62, 104; 63, 363; 93, 309; 109, 163; 118, 138; 126, 417. Subd. 4—117, 177; 118, 138; 126, 416; 144, 594. Subd. 6—116, 414.

The code, in defining a corporation, says it has "certain powers and duties of a natural person": Sec. 283. Section 354 proceeds to enumerate these powers, and section 355 limits its powers to those enumerated and to those necessarily incidental.

Succession for period limited: See, Code limit of fifty years, sec. 290. Limit for homestead corporations ten years: Sec. 557.

Where action against corporation may be brought: See Const. Cal., 1879, art. XII, sec. 16; see Code Civ. Proc., sec. 395.

Acquiring property by eminent domain: See Code Civ. Proc., secs. 1237 et seq.

Power to make by-laws: See ante, sec. 301.

Selling delinquent shares: See ante, secs. 331 et seq.

§ 355. Limitation of powers. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given. En. March 21, 1872.

Cal. Rep. Cit. 62, 104.

Incidental powers.—This section is a negative grant of incidental powers, with respect to which, see sec. 354.

§ 356. Banking expressly prohibited. No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money. En. March 21, 1872.

Issuing or circulating paper money, except as authorized by the United States, punished by Penal Code, sec. 648.

Constitutional provisions to the same purpose: Const. Cal., 1879, art. XII, sec. 5. That this limitation upon corporate powers does not prevent the execution of negotiable instruments, see sec. 354, subd. 8.

§ 357. Misnomer does not invalidate instrument. The misnomer of a corporation in any written instrument does

not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended. En. March 21, 1872.

Cal. Rep. Cit 93, 314; 138, 194.

§ 358. Corporation to organize within one year. If a corporation does not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, or if, after its organization and commencement of its business, it shall lose or dispose of all of its property, and shall fail for a period of two years to elect officers and transact, in regular order, the business of said corporation, its corporate powers shall cease, and the said corporation may be dissolved at the instance of any creditor of the said corporation, at the suit of the state, on the information of the attorney general, but the resumption of its business in good faith by such corporation prior to the commencement thereof shall be a bar to such suit. The due incorporation of any company claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney general; provided, however, as to any company claiming in good faith to be, and which has been doing business for ten consecutive years as a corporation, no such inquiry shall be made either by the state or by any person whatsoever. En. March 21, 1872. Am'd. 1900-01, 632.

Cal. Rep. Cit. 64, 72; 77, 372; 80, 186; 82, 186; 97, 277; 102, 64; 102, 66; 102, 67; 106, 310; 109, 601; 117, 177; 126, 545; 131, 154; 137, 445.

Same respecting street railroads: See post, sec. 502.

Provision respecting railroad companies, two years: See post, sec. 468.

§ 359. Increasing and diminishing capital stock, how. No corporation shall issue stocks or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness is void. Every corporation may increase or diminish its capital stock, and every corporation or two or more corporations,

§359 Am'd.

may create or increase its or their bonded indebtedness, subject to the following provisions:

First—The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote represent at least two-thirds of the subscribed or issued capital stock, or in the manner otherwise in this section provided; when by meeting as aforesaid, then such meeting must be called by the board of directors or trustees and notice must be given by publication in a newspaper published in the county or city and county where the principal place of business of such corporation is located, or if there be none published in said county or city and county, then in a newspaper published in an adjoining county, or city and county, such paper to be designated by the board of directors or trustees in the order calling for the meeting.

Second—The notice must specify the object of the meeting and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation and at the building where the board of directors or trustees usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of a corporation.

Third—The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two-thirds of the subscribed or issued capital stock at a meeting called by the board of directors or trustees, and after notice of the time and place of the meeting published in the same manner and for the time prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebtedness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of meeting to increase or diminish the capital stock; or such original creation of bonded indebtedness may be made as otherwise in this section provided.

Fourth—In addition to the notice by publication, when proceedings are to be had hereunder at a meeting of stockholders, the secretary of the corporation shall also address a notice to each of the stockholders whose names appear

on the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the day appointed for such meeting.

Fifth—In lieu of such call for meeting of stockholders and of such notice and publication of the same and of a stockholders' meeting held in pursuance thereof and of said vote thereat representing at least two thirds of the subscribed capital stock, any corporation may diminish its capital stock and also originally create its bonded indebtedness by a resolution adopted by the unanimous vote of its board of directors or trustees at a regular meeting or at a special meeting called for that purpose and approved by the written assent or assents of the stockholders holding two thirds of the subscribed or issued capital stock, which assent or assents must be filed with the secretary of the corporation; but the secretary of the corporation must address by mail, postage fully prepaid, a copy of such resolution to each of the stockholders whose names appear upon the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the certificate hereinafter provided is made and signed or file [d] as hereinafter provided, and within that time any stockholder may file with such secretary his dissent in writing; but it is further provided that if at any time within said thirty days such written assent or assents of the stockholders holding all of the subscribed or issued capital stock be so filed with said secretary, then and at once and without further delay the certificate hereinafter provided for may be so made, signed and filed as hereinafter provided and with the same effect, but such capital stock cannot be diminished to an amount less than the indebtedness of the corporation, and no increase of capital stock or bonded indebtedness can be made, except at a meeting of stockholders as in this section provided.

Sixth—Any two or more corporations may by a separate compliance by each corporation with the provisions of this section applicable in the premises in respect to creating or increasing bonded indebtedness, create or increase a consolidated bonded indebtedness of such corporations, to be

binding jointly and severally on such corporations, and which may be secured by a consolidated mortgage or deed of trust executed by all such corporations, mortgaging or conveying in trust all or any of the properties of all such corporations, acquired or to be acquired.

Seventh—Upon such increase or diminution of the capital stock or creation or increase of the bonded indebtedness being made in accordance with the provisions of this section there shall be made, if proceedings are had under subdivisions first, second, third and fourth above, a certificate under the corporate seal and signed by the president and secretary of the corporation or of each corporation acting in the premises and a majority of the directors or trustees of such corporation, or each corporation so acting, showing a compliance by such corporation, or each corporation so acting, with the requirements of said last named subdivisions and the amount to which the capital stock has been increased or diminished or the amount of the bonded indebtedness created, or to which the bonded indebtedness may have been increased, and the amount of stock represented at the meeting and the total vote in the affirmative by which the same was accomplished and the total vote in the negative; or, if such proceedings be had and take under subdivision fifth of this section as to diminution of capital stock or original creation of bonded indebtedness a like certificate shall be made and sealed and signed, as aforesaid, showing a compliance by such corporation, and by each corporation acting in the premises, with the requirements of said subdivision fifth, and the amount to which the capital stock has been diminished or the amount of bonded indebtedness so originally created, and the total amount of the stock represented by the said written assent or assents so filed with the secretary and the total amount of stock represented by the said written dissent or dissents so filed. In case of a consolidated bonded indebtedness each corporation which is a party thereto shall cause to be made and sealed and signed and verified and filed, as in this section provided, a separate certificate.

Eighth—In all cases the certificate shall state the total number of subscribed or issued shares of the capital stock of the corporation, or of each corporation respectively acting in the premises, and shall be verified by the oath of the said president and secretary, or of the said respective presidents and secretaries. Such consolidated bonded

indebtedness may be created or increased to an amount equal to the par or face value of the aggregate amount of the subscribed or issued capital stocks of said two or more corporations, but shall not exceed such aggregate amount. In each and every case the certificate must be filed in the office of the clerk in the county or city and county where the original articles of incorporation of the corporation or corporations acting hereunder are filed and a certified copy thereof, certified by such clerk, shall be filed in the office of the secretary of state: and thereupon the capital stock shall be so increased or diminished, or the bonded indebtedness or consolidated bonded indebtedness shall be created or increased accordingly, and such certificate or certificates so filed shall be, when said certified copy or copies are so filed, conclusive proof of such increase or diminution of capital stock or such creation or increase of bonded or consolidated bonded indebtedness and the validity of each thereof. When the by-laws of a corporation prescribe the paper in which notices of meetings of directors or trustees or stockholders are to be published the notices of publication herein provided for shall be published in such paper, unless publication thereof shall have ceased. En. March 21, 1872. Am'd. 1873-4, 207; 1883, 31; 1885, 141; 1889, 364; 1893, 191; 1903, 347.

Cal. Rep. Cit. 56, 651; 56, 653; 65, 617; 96, 161; 103, 630; 109, 594; 109, 597; 109, 600; 112, 213; 116, 424; 125, 454; 135, 583; 147, 582.

§ 360. Corporations may acquire real property, and how much. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specialy provided. A corporation may acquire real property, as provided in title seven, part three, of the Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title. By a unanimous vote of all the directors at any regular meeting, any corporation existing, or hereafter to be formed under the laws of this state, may acquire and hold the land and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business. En. March 21, 1872. Am'd. 1873-4, 208; 1905, 774.

Section 363, approved March 5, 1899, is added to section 360, to the end that there shall not, as now, be two sections numbered 363.—Code Commissioner's Note.

Cal. Rep. Cit. 144, 594.

Power of insurance corporations to acquire land: See post, sec. 415.

Power of railroad corporation to acquire land: See post, sec. 465.

§ 361. Consolidation of mining corporations owning adjoining claims. En. Stats. 1875-6, 75. Rep. 1905, 775.

Cal. Rep. Cit. 147, 666.

Repealed, and the matter therein added to section 587a.—Code Commissioner's Note.

§ 361a. Transfer of franchise not valid without consent of stockholders. No sale, lease, assignment, transfer or conveyance of the business, franchise and property, as a whole, of any corporation now existing, or hereafter to be formed in this state, shall be valid without the consent of stockholders thereof, holding of record at least two thirds of the issued capital stock of such corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer or conveyance, or by vote at a stockholders' meeting of such corporation called for that purpose, but with such assent, so expressed, such sale, lease, assignment, transfer or conveyance shall be valid; provided, however, that nothing herein contained shall be construed to limit the power of the directors of such corporation to make sales, leases, assignments, transfers or conveyances of corporate property other than those hereinabove set forth. En. Stats. 1903, 396.

§ 362. Amendment of articles or certificate of incorporation. Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, or the written assent of the majority of the members, if there is no capital stock; and a copy of the said articles of incorporation, as thus amended duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, shall be filed in the office where the original articles of incorporation are filed, and a certified copy thereof, duly certified by such county clerk, in the office of the secretary of state. A copy of such articles of incorporation, so amended, duly certified by the secretary of state, must be

filed in the office of the county clerk of every county in which such corporation has or holds property, except only the county in which the original amended articles of incorporation have been filed. Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, as required by the preceding sentence, shall be subject to the penalties and liabilities provided in section two hundred and ninety-nine for a failure of corporations to file copies of their articles of incorporation in the offices of the county clerks of the counties in which they shall purchase, hold, or locate property, and from the time of so filing such copy of the amended articles of incorporation, such corporation shall have the same powers, and the stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation. Such original and amended articles of incorporation shall together contain all the matters and things required by the laws under which the original articles of incorporation were executed and filed. Nothing contained in this section must be construed to cure or amend any defect existing in the original articles of incorporation heretofore filed, in that such articles did not set forth the matters required to make the same valid at the time of filing. If the assent of two thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has not been obtained, a notice of the intention to make such amendment must first be advertised for thirty days in some newspaper published in the town, city, county, or city and county in which the principal place of business of the corporation is located, before the filing of the proposed amendment. Nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock, change its name, extend its corporate existence, or increase or diminish the number of its directors, without complying with the special provisions of this code applicable thereto. En. Stats. 1885, 91. Am'd. 1893, 131; 1903, 411; 1905, 775. Cal. Rep. Cit. 99, 396; 124, 115.

§ 363. Corporations may own their lots and buildings. En. 1889, 67. Rep. 1905, 776.

There were formerly two sections of this number, one adopted March 19, 1889, and the other adopted March 5, 1889. The former remains in force; the latter was repealed, 1905, 776. See Code Commissioner's note under § 360, ante.

§ 363. Correction of erroneous filing of articles of incorporation. When articles of incorporation have been prepared, subscribed, and executed in accordance with the provisions of sections two hundred and ninety and two hundred and ninety-two of the Civil Code, and such original articles filed by error or inadvertence with the clerk of a county other than that named in the articles of incorporation as the county in which the principal place of business is to be transacted, and the secretary of state shall have issued a certificate of incorporation based on a certified copy of such original articles of incorporation, any stockholder or director of such corporation may petition the superior court of the county in which said original articles of incorporation were filed for an order to withdraw such original articles of incorporation, and file in place thereof a certified copy of the copy thereof on file in the office of the secretary of state. Such petition must be verified, and must state clearly the facts, showing that such articles of incorporation were filed by inadvertence and mistake; and notice of the hearing of said petition must be given for at least ten days before the day of hearing, by publication in a newspaper published in the county where such petition is filed. Upon the day set for hearing the petition the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of state in the place thereof filed; and the original articles of incorporation must be filed within ten days thereafter in the county in which the principal place of business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of state, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance. En. Stats. 1889, 332.

§ 364. Corporations may transfer foreign concessions. Any corporation of this state owning grants, concessions, franchises, and properties, or any thereof, in any foreign country, may sell and convey the same to the government of such foreign country, or to any person or persons, or any corporation or corporations, or association, or associa-

tions, created by or existing under the laws of this or any other state of the United States, or any foreign government; provided, however, that the powers hereby granted shall only be exercised by a majority of the entire board of directors of such corporation of this state with the concurrence in writing of the holders of two-thirds in amount of the capital stock thereof. En. Stats. 1899, 95.

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C. C., 1906, new. Enact.

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§ 365. Whenever it shall appear that the minutes, records, seal, assessment-book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records of any corporation, municipal, quasi or otherwise, in this state, shall have been or shall hereafter be lost or destroyed by conflagration or other public calamity, such corporation, by a vote of its board of directors, or any stockholder or bondholder of such corporation, may petition the superior court of the county, or city and county, in which the principal place of business of such corporation is located, to restore such lost, destroyed, or injured minutes, records, seal, assessment-book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records. Such petition shall state the loss, destruction or injury to any such records or documents or certificates of stock or bonds, or other papers or records, or any part or portion thereof, giving the cause of such loss, injury or destruction. On the filing of such petition, duly verified, said superior court shall make an order, fixing a time and place for the hearing of the same, and directing the clerk of the court to give notice of such a hearing by publication of a notice stating the time and place of the hearing of said petition and the purpose thereof, which time shall not be less than twenty-five nor more than thirty days from the completion of such publication. Notice of such hearing shall be given by publication in some newspaper of general circulation, printed and published in such county, or city and county, where the principal place of business of said corporation is located, and if there be no such newspaper published in said county, or city and county, then in some adjoining county, to be designated by the court or judge thereof, which publication shall be daily (except Sundays) for a period of at least three successive weeks. In case there is no daily newspaper published in either of said counties then such notice shall be published once a week for three successive weeks in a weekly newspaper, published in such county. A copy of said notice shall also be personally served upon all persons affected thereby residing in the State of California, whose place of residence or place of business is known to the corporation or any of its officers, if such person can be found within the state, which service may be made at any time during said period of publication. If the place of business or place of residence of any persons affected by said petition or proceedings is un-

known to the corporation or any of its officers, within forty-eight hours after the filing of said petition, a copy of said notice shall be mailed to each of the persons affected by said petition or proceeding whose place of residence or place of business is unknown to said corporation or any of its officers, addressed to them, postage prepaid, at the county seat of the county, or county and city, where the place of business of said corporation is located. In addition to the notice by publication, the petitioner shall address a copy of said notice to each of the stockholders of said corporation, and also to each of the persons affected by said petition, whose names and places of residence or business are known to the corporation or any of its officers, at his place of business or residence, postage prepaid, which notice shall be mailed to such stockholders or persons within forty-eight hours after the filing of said petition. The court before proceeding to hear the case, shall require proof to be made that notice has been published and given as hereinbefore required and service of such notice personally if the same has been so served and if the same has not been so served, an affidavit of the petitioner stating the reasons why such personal service has not been made, shall also be then filed. Upon the completion of said publication, said court shall have jurisdiction to inquire into and determine the loss, injury or destruction of such minutes, records, seal, assessment-book, stock journal, stock ledger, certificate book, certificates of stock or bonds, or other papers and documents, and to fix and determine by its judgment or decree, the ownership of said certificates of stock or bonds and the persons entitled thereto, and to direct such corporation to restore its records, seal, assessment-book, stock journal, stock ledger, certificate book, certificates of stock or bonds or any other paper or record so lost, injured or destroyed, and to issue new bonds or certificates of stock or other paper or document to any person or persons to whom the same may belong or who may be entitled thereto, as determined by the judgment of the court. Any stock, bond or other paper, the ownership of which cannot be determined, shall be found by the court, by its judgment, to belong to unknown owners, and in all proceedings of such corporation, including proceedings for assessment of stock, and the collection of such assessment, and the payment of dividends, and notice of sale and sale for delinquent assessments, said stock or dividends shall be so designated as belonging to unknown owners, without giving the name of the owner thereof, or the number of the certificate or series or issue. [In effect June 18, 1906.]

ARTICLE II.

RECORDS.

§ 377. Records—of what, and how kept.
§ 378. Other records to be kept by corporations for profit, and others.

§ 377. Records—of what, and how kept. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation. En. March 21, 1872.

Cal. Rep. Cit. 63, 484; 76, 26; 78, 633; 94, 549; 107, 636; 135, 625; 146, 223.

Refusal to permit inspection: See Pen. Code, sec. 565.

§ 378. Other records to be kept by corporations for profit, and others. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor. En. March 21, 1872.

Cal. Rep. Cit. 101, 148; 107, 453; 107, 636; 146, 223.

See acts concerning statements by banks and bankers, Appendix, title Banks and Banking.

ARTICLE III.

EXAMINATION OF CORPORATIONS, ETC.

§ 382. Examination into affairs of corporation, how made by officers of state.
§ 383. Examination made by the legislature.
§ 384. Chapter and article may be repealed.

§ 382. Examination into affairs of corporation, how made by officers of state. The attorney general or district attorney, whenever and as often as required by the governor, must examine into the affairs and conditions of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers and documents belonging to such corporation, or appertaining to its affairs and condition. En. March 21, 1872.

Cal. Rep. Cit. 72, 23; 110, 460.

Permitting inspection of books: See Pen. Code, sec. 565.

§ 383. Examination made by the legislature. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and, for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe. En. March 21, 1872.

Permitting inspection of books: See Pen. Code, sec. 565.

§ 384. Chapter and article may be repealed. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all

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corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred. En. March 21, 1872.

Cal. Rep. Cit. 145, 480.

Note—In the constitution of California, in force when this code was adopted, was the following section: "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed": Art. IV, sec. 31. The constitution of 1879, art. XII, sec. 1, preserves this section in the following language: "Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed." The code commissioners quote the section from the former constitution and say: "Section 384 was inserted in this code out of an abundance of caution, and not because it was deemed necessary, for there can be but little doubt that the constitutional provision quoted at the head of this note enters into and becomes a part of the contract, thereby reserving to the legislature the right to repeal, impair, or alter any law relative to the formation of corporations, even though the result reached would be the dissolution of every corporation organized within the state."

ARTICLE IV.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

§ 388. Franchise may be treated as property, and sold under execution.
§ 389. Purchaser to transact business of corporation.
§ 390. Purchaser may recover penalties, etc.
§ 391. Corporation to retain powers after sale.
§ 392. Redemption.
§ 393. Sale where made.

§ 388. Franchise may be treated as property, and sold under execution. For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property. En. March 21, 1872. Am'd. 1873-4, 208; 1897, 16; 1905, 409.

This section as it formerly stood applied only to corporations authorized to receive tolls, and was probably unconstitutional as creating a special law where a general law may be made applicable. (See Krause v. Durbrow, 19 Cal. Dec. 93.) The amendment makes the section applicable to all corporations.—Code Commissioner's Note.

Cal. Rep. Cit. 69, 458; 80, 341; 86, 283; 98, 313.
Seizure on execution: See Code Civ. Proc., sec. 688.

§ 389. Purchaser to transact business of corporation. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities until the redemption of the same, as hereinafter provided. En. March 21, 1872.

§ 390. Purchaser may recover penalties, etc. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same. En. March 21, 1872.

§ 391. Corporation to retain powers after sale. The person, company, or corporation whose franchise is sold,

as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale. En. March 21, 1872. Am'd. 1905, 409.

The amendment makes the section applicable to persons and companies as well as to corporations.—Code Commissioner's Note.

§ 392. Redemption. Redemption from any such sale may be had as provided in the Code of Civil Procedure in the case of redemptions from sales of real estate on execution. En. March 21, 1872. Am'd. 1905, 409.

The amendment makes applicable to an execution sale of franchises the law of redemption applicable to other sales of real property.—Code Commissioner's Note.

Cal. Rep. Cit. 132, 535.

§ 393. Sale where made. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, is situated. En. March 21, 1872. Am'd. 1873-4, 209; 1905, 409.

Omits the words "upon which the taxes are paid," that having apparently no relevancy to the section.—Code Commissioner's Note.

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

§ 399. Proceedings to disincorporate.
§ 400. On dissolution, directors to be trustees for creditors.
§ 401. Extension of term.
§ 402. How corporations may continue their existence. (Repealed.)

§ 399. Proceedings to disincorporate. En. March 21, 1872. Rep. 1905, 563.

This section, which purports merely to designate the place in the Code of Civil Procedure where the dissolution of corporations is provided for, does not state any rule of law and constitutes but an imperfect index to the provisions referred to.—Code Commissioner's Note.

Cal. Rep. Cit. 84, 365; 84, 366; 84, 367; 108, 436.

Involuntary dissolution: See Code Civ. Proc., secs. 227, 802.

Voluntary dissolution: See Code Civ. Proc., sec. 1227-1233.

Act providing for dissolution of savings banks, trust companies and banks of deposit: See post, Appendix, title Banks and Banking.

§ 400. On dissolution, directors to be trustees for creditors. Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation. En. March 21, 1872.

Cal. Rep. Cit. 84, 358; 84, 365; 84, 366; 84, 367; 84, 369; 84, 370; 84, 374; 84, 380; 100, 119; 101, 147; 101, 148; 101, 149.

§ 401. Extension of term. Every corporation formed for a period less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject if voted by stockholders representing two thirds of the capital stock; or by two-thirds of the members; or may be made upon the written assent of two thirds of the members or of stockholders representing two thirds of the capital stock. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period. En. March 21, 1872. Am'd. 1873-4, 209; 1905, 564.

§401 Am'd. ' ' '

The design of the amendment is to require the written assent of stockholders representing two-thirds of the capital stock instead of permitting two-thirds in number of the stockholders to act by their written consent. The change consists in the substitution of the words "two-thirds of the members or of stockholders representing two-thirds of the capital stock" in place of that number of stockholders or members.—Code Commissioner's Note.

Cal. Rep. Cit. 109, 582; 122, 339.

§ 402. How corporations may continue their existence. (Repealed.) En. March 21, 1872. Rep. 1873-4, 209.

Cal. Rep. Cit. 122, 336; 122, 339.

CHAPTER V.

New chapter added March 20, 1905. Stats. 1905, 410.

GENERAL PROVISIONS AFFECTING CORPORATIONS.

§ 403. Title one to apply to all corporations, with certain exceptions.
§ 404. Power of the legislature to amend or repeal this part, or any title, chapter, article, or section thereof, and to dissolve all corporations created thereunder.

§ 403. Title one to apply to all corporations, with certain exceptions. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails. En. March 21, 1872. Rep. 1905, 410. En. Stats. 1905, 410.

The bill adds a new chapter entitled "General Provisions Affecting Corporations." Said chapter is made up of the old section 403, which now stands in a chapter entitled "Extension and Dissolution of Corporations," and of the matter now in section 384, which now stands in a chapter entitled "Examination of Corporations." The object of the rearrangement is the placing of the sections under a more appropriate chapter heading.—Code Commissioner's Note.

Cal. Rep. Cit. 109, 582; 122, 339.

§ 404. Power of legislature to amend or repeal this part, or any title, chapter, article, or section thereof, and to dissolve all corporations created thereunder. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred. En. Stats. 1905, 410.

See note to § 403, ante.

Cal. Rep. Cit. 145, 480.

CHAPTER VI.

Chapter added March 21, 1905. Stats. 1905, 630.

FOREIGN CORPORATIONS.

§ 405. Designation of person on whom process may be served. Service on the secretary of state, when valid.
§ 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation.
§ 407. Foreign railway corporations, rights of in this state.
§ 408. Foreign corporations to file certified copies of articles of incorporation.
§ 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation.
§ 410. Foreign corporations, penalty for failure to file certified copies of articles of incorporation.

p. 410 §405 Am'd. p. 410

§ 405. Designation of person on whom process may be served. Service on the secretary of state, when valid. Every corporation other than those created by or under the laws of this state must, within forty days from the time it commences to do business therein, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation. En. Stats. 1905, 630.

These sections codify the statute of 1889, page 111, and section 1, statute of 1880, page 21.—Code Commissioner's Note.
The act intended to be referred to here by the Commissioner is probably that of 1871-2, p. 826, as amended 1899, p. 111.—Ed.

§ 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation. Every corporation which complies with the provisions of this chapter is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but no corporation not created by or under the laws of this state is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state until the corporation has complied with the provisions of the preceding section. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or em-

ployed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the laws then in force, requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation heretofore or hereafter made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this chapter. En. Stats. 1905, 630.

See note to § 405, ante.

§ 407. Foreign railway corporations, rights of in this state. Every railway or other corporation organized for the purpose of carrying freight or passengers under or by virtue of the laws of the United States, or of any state or territory thereof, may build railroads, exercise the right of eminent domain, and transact any other business which it might do if it were created and organized under or by virtue of the laws of this state, and has the same rights, privileges, and immunities, and is subject to the same laws, penalties, obligations, and burdens as if created or organized under and by virtue of the laws of this state. Nothing contained in this section shall be construed to exempt any corporation from any duty or liability imposed upon it by any of the provisions of this chapter. En. Stats. 1905, 631.

See note to § 405, ante.

§ 408. Foreign corporations to file certified copies of articles of incorporation. Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing business in this state, or is maintaining an office herein, or which shall hereafter do business in this state or maintain an office herein, or which shall enter this state for the purpose of doing business herein, must file in the office of the secretary of state of the State of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, and a cer-

§408 Am'd. 411

tified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property. En. Stats. 1905, 631.

These sections codify the statute of 1901, page 108.—Code Commissioner's Note.

§ 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation. For filing and issuing a certified copy as required in section four hundred and eight of this code, corporations formed under the laws of another state, or of a territory, or of a foreign country, must pay the same fees as are paid by corporations formed under the laws of this state. En. Stats. 1905, 631.

See note to § 408, ante.

§ 410. Foreign corporations, penalty for failure to file certified copies of articles of incorporation. Every corporation organized under the laws of another state, territory, or of a foreign country, which shall neglect or fail, within ninety days from the taking effect of this section, to comply with the conditions of sections four hundred and eight and four hundred and nine of this code, shall be subject to a fine of not less than five hundred dollars, to be recovered in any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of sections four hundred and eight and four hundred and nine of this code, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney general of the state, or both, as soon as practicable, to institute proceedings to recover the fine provided for in this section, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state; in addition to which penalty, no foreign corporation which shall fail to comply with sections four hundred and eight and four hundred and nine of this code can maintain any suit or action in any of the courts of this state until it has complied with said sections; provided, that any such corporation which, prior to the 8th day of March, 1901, shall have complied with the provisions of the act entitled "An act to amend 'An act in relation to foreign corporations,' approved April 1, 1872," approved March 17, 1899, is exempted from the provisions of this section and the two sections next preceding. En. Stats. 1905, 631.

See note to § 408, ante.

TITLE II.

INSURANCE CORPORATIONS.

Chapter I. General Provisions, §§ 414-420.
II. Fire, Marine and Title Insurance Corporations, §§ 424-432.
III. Mutual Life, Health, and Accident Insurance Corporations, §§ 437-452.

CHAPTER I.

GENERAL PROVISIONS.

§ 414. Subscriptions to capital stock opened, and how collected.
§ 415. Purchase and conveyance of real estate.
§ 416. Policies, how issued and by whom signed.
§ 417. Dividends, of what and when declared.
§ 418. Directors liable for loss on insurance in certain cases.
§ 419. Capital to be at least two hundred thousand dollars.
§ 420. Exception, capital of one hundred thousand dollars.
§ 421. Investment of capital.
§ 421. How capital and accumulations may be invested by.

§ 414. Subscriptions to capital stock opened, and how collected. After the secretary of state issues the certificate of incorporation, as provided in article I, chapter I, title I, of this part, the directors named in the articles of incorporation must proceed in the manner specified, or in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in chapter II of title I provided. En. March 21, 1872.

Insurance in general: See post, secs. 2527-2766.

§ 415. Purchase and conveyance of real estate. No insurance corporation may purchase, hold or convey real estate, except as hereinafter set forth, to wit:

1. The building in which it has its principal office and the land upon which it stands.

2. Also, such as may be requisite for its accommodation in the convenient transaction of its business.

3. Also, such as may be conveyed to it, or to any person for it, by way of mortgage, or in trust or otherwise, to secure or provide for the payment of loans previously contracted or for money due.

4. Also such as may be purchased at sales upon deeds of trust, or judgments obtained or made for such loans or debts.

5. Also such as may be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

All such real estate, mentioned in subdivisions three, four and five, so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same. En. March 21, 1872. Am'd. 1905, 21.

§ 416. Policies, how issued and by whom signed. All policies made by insurance corporations must be subscribed by the president or vice-president, or in case of the death, absence, or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal. En. March 21, 1872.

§ 417. Dividends, of what and when declared. The directors of every insurance corporation, at such times as their by-laws provide, must make, declare, and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits, nor divided, except as provided in chapter II of this title. En. March 21, 1872.

Declaring dividends: See ante, sec. 309.

§ 418. Directors liable for loss on insurance in certain cases. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance, or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance. En. March 21, 1872.

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§ 419. Capital to be at least two hundred thousand dollars. Every company, corporation, or association hereafter formed or organized under the laws of this state for the transaction of business in fire, marine, inland navigation, or life insurance, must have a subscribed capital stock

equal to at least two hundred thousand dollars, twenty-five per cent of which must be paid in previous to the issuance of any policy, and the residue within twelve months from the day of filing the certificate of incorporation. No person, corporation, or association organized or formed under the laws of any other state or country, as a stock company, must transact any such insurance business in this state, unless such a person, corporation, or association has a paid-up capital stock equal to at least two hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this state. Nor must any person, corporation, or association, organized or formed under the laws of any other state or country as a mutual insurance company, transact any such insurance business in this state, unless such person, corporation, or association possesses available cash assets equal to at least two hundred thousand dollars, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred and two of the Political Code of this state. En. March 21, 1872. Am'd. 1873-4, 269; 1877-8, 80.

Cal. Rep. Cit. 64, 52.

§ 420. Exception, capital of one hundred thousand dollars. Every company, corporation, or association, hereafter formed or organized under the laws of this state for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code must have a subscribed capital stock equal to at least one hundred thousand dollars, which must be paid in at the times and in the manner prescribed for the payment of the capital stock of a corporation organized under section four hundred and nineteen of said Civil Code. No company, corporation, or association, formed or organized under the laws of any other state or country as a stock company, must transact any such insurance business in this state without a paid-up capital stock of not less than one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this state. Nor must any company, corporation, or association, formed or organized under the laws of any other state or country as a mutual insurance company, transact any such insurance business in this state unless such company, corporation, or association, possesses avail-

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able cash assets equal to at least one hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred and two of the Political Code of this state. En. Stats. 1877-8, 80.

§ 421. Investment of capital. Corporations organized subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following-named securities:

1. In the purchase of, or loans upon interest-bearing bonds of the United States government.

2. In the purchase of, or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds.

3. In the purchase of, or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of any state or territory of the United States not in default for interest on such bonds.

4. In loans upon unincumbered real property, which shall be worth, at the time of the investment, at least, forty per cent more than the sum loaned, or upon merchandise or cereals in warehouse, but in no instance shall such loan be made in excess of seventy-five per cent of the security taken.

5. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided for in subdivisions one, two, three and four of this section, invest an amount not exceeding fifty per cent of their subscribed capital stock, in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such material or plant shall be deemed an asset valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

6. Corporations organized for and engaged in the business of fire, life, health, accident and marine insurance, may, after the investment of two hundred thousand dollars, and corporations formed or organized for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code may, after the investment of one hundred thousand dollars, in the manner provided in subdivisions one, two, three and four of this section, invest the balance of their capital and any accumulations in interest-bearing first mortgage bonds of any corporations (except mining companies), not in default of interest, organized and carrying on business, under the laws

of any state of the United States. Provided, that a two-thirds vote of all the directors of such corporations shall approve such investment. It shall be the duty of the officers of such corporation to report quarterly, on the first days of January, April, July and October of each year to the insurance commissioner a list of such investments so made by them, and the insurance commissioner may, if such investments, or any of them, seem injudicious to him, require the sale of the same. But no investment in the securities named in subdivisions one, two, three and six of this section must be made in an amount exceeding the market value of such securities, at the date of such investment.

7. Life insurance companies, or corporations, no matter when organized, may loan upon their own policies, provided that the amount so loaned upon each policy shall not exceed the reserve against said policy at the time said loan is made; provided further, that no policy loans whatever shall ever be used as security which may be deposited with the insurance commissioner under section six hundred and thirty-four of the Political Code; and provided further, that whenever any such loan in any amount is made on a policy registered with the insurance commissioner under said section six hundred and thirty-four of the Political Code, such registration shall be forthwith canceled.

Nothing in this section contained shall be construed as in any wise affecting the provisions of section four hundred and forty-four of this code. En. Stats. 1905, 34.

Cal. Rep. Cit. 123, 203.

This section was adopted March 3, 1905.
There was also another § 421 adopted March 21, 1905, as follows:

§ 421. How capital and accumulations may be invested by. Corporations organized under the laws of this state for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following named securities.

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1. In the purchase of, or loans upon interest-bearing bonds of the United States government.

2. In the purchase of, or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds.

3. In the purchase of, or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of any state or territory of the United States not in default for interest on such bonds.

4. In loans upon unencumbered real property, which shall be worth, at the time of the investment, at least, forty per

cent more than the sum loaned, or upon merchandise or cereals in warehouse, but in no instance shall such loan be made in excess of seventy-five per cent of the security taken.

5. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided for in subdivisions one, two, three and four of this section, invest an amount not exceeding fifty per cent of their subscribed capital stock, in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such material or plant shall be deemed an asset valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

6. Corporations organized for and engaged in the business of fire, life, health, accident and marine insurance, may, after the investment of two hundred thousand dollars, and corporations formed or organized for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code may, after the investment of one hundred thousand dollars, in the manner provided in subdivision one, two, three and four of this section, invest the balance of their capital and any accumulations in the purchase of or loans upon the stock of any corporation (except mining companies) organized and carrying on business under the laws of the State of California which have at the time of investment a market value of not less than their paid-in value, and which are rated as first-class securities, or in interest-bearing first mortgage bonds of same not in default of interest; provided, that a two-thirds vote of all the directors of such corporations shall approve such investment. It shall be the duty of the officers of such corporation to report quarterly during the months of January, April, July and October of each year to the insurance commissioner a list of such investments so made by them, and the insurance commissioner may, if such investments, or any of them, seem injudicious to him, require the sale of the same. But no investment in the securities named in subdivisions one, two, three and six of this section must be made in an amount exceeding the market value of such securities, at the date of such investment.

7. Life insurance corporations may loan upon their own policies provided that the amount so loaned upon each policy shall not exceed the reserve against said policy at the time said loan is made; provided further, that no policy loans whatever shall ever be used as security which may

be deposited with the insurance commissioner under section six hundred and thirty-four of the Political Code; and provided further, that whenever any such loan in any amount is made on a policy registered with the insurance commissioner under said section six hundred and thirty-four of the Political Code, such registration shall be forthwith canceled.

8. Nothing in this section contained shall be construed as in anywise affecting the provisions of section four hundred and forty-four of this code. En. 1905, 628.

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CHAPTER II.

FIRE, MARINE, AND TITLE INSURANCE CORPORATIONS.

§ 424. Payment of subscriptions. Capital to be all paid in twelve months.
§ 425. Certificate of capital stock paid up to be filed, and when.
§ 426. Property which may be insured.
§ 427. Funds may be invested, how.
§ 428. Limit of one risk.
§ 429. Amounts to be reserved before making dividends.
§ 430. Reservation by companies with less than $200,000 capital.
§ 431. Amounts to be reserved by life insurance companies.
§ 432. Corporations for insuring titles to real estate.

§ 424. Payment of subscriptions. Capital to be all paid in twelve months. The entire capital stock of every fire or marine insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up. En. March 21, 1872.

Fire insurance: See post, secs. 2752 et seq.

Marine insurance: See post, secs. 2655 et seq.

County fire insurance companies, act providing for: See post, Appendix, title Insurance.

§ 425. Certificate of capital stock paid up to be filed, and when. The president and a majority of the directors must within thirty days after the payment of the twenty-five per cent of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner. En. March 21, 1872.

§ 426. Property which may be insured. Every corporation formed for fire or marine insurance, or both, may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be reinsured. En. March 21, 1872.

Insurable interest defined: See post, sec. 2546.

§ 427. Funds may be invested, how. En. March 21, 1872. Am'd. 1873-4, 210, 1877-8, 81; 1887, 22; 1899, 66. Rep. 1905, 34; 1905, 628.

Cal. Rep. Cit. 123, 203.

See section 421, ante.

§ 428. Limit of one risk. Fire and marine insurance corporations must never take on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one-tenth part of their capital actually paid in, and intact at the time of taking such risk, without at once reinsuring the excess above one-tenth. En. March 21, 1872. Amended 1873-4, 210. Amended 1905, 570.

§ 429. Amounts to be reserved before making dividends. No corporation formed subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state and transacting fire, marine, inland navigation insurance business, or insurance provided for by section four hundred and twenty (420) of this code, except insurance of the title to real property, must make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock.
2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks.
3. A fund equal to one half of the amount of all premiums on all other risks not terminated at the time of making such dividend.
4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

En. March 21, 1872. Am'd. 1877-8, 81; 1887, 23.

Declaring dividends generally: See ante, sec. 309. see also ante, sec. 417, as to declaring dividends by insurance companies generally.

§ 430. Reservation by companies with less than $200,000 capital. No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving:

1. A sum necessary to form, with the subscribed capital stock, the aggregate sum of two hundred thousand dollars;

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;

3. A fund equal to one half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend;

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes. En. March 21, 1872.

Cal. Rep. Cit. 110, 460.

Act conferring power to establish fire patrol: See post, Appendix, title Fire Partol.

§ 431. Amounts to be reserved by life insurance companies. En. Stats., 1877-8, 81. Rep. 1905, 571.

Section 431, which dealt with the amounts to be received by life insurance companies, stood in a chapter entitled "Fire, Marine, and Title Insurance Corporations." It is transferred to a more appropriate chapter, and numbered 452.—Code Commissioner's Note.

§ 432. Corporations for insuring titles to real estate. Corporations transacting business in insuring titles to real estate shall annually set apart a sum equal to twenty-five per cent of their premiums collected during the year, which sum shall be allowed to accumulate until a fund shall have been created amounting to ten per cent of the subscribed capital stock. Such fund shall be maintained as a further security to policy holders, and shall be known as the surplus fund; and if at any time such fund shall be impaired by reason of a loss, the amount by which it may be impaired shall be restored in the manner hereinabove provided for its accumulation. The reporting of a loss shall be deemed an impairment of such fund for the purposes of this section. Such corporation must not make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock.

2. The amount owing to the surplus fund, under the provisions of this section.

3. A sum sufficient to pay all losses reported, or in course of settlement, which shall be in excess of the surplus fund, and all liabilities for expenses and taxes. En. 1887, 23.

CHAPTER III.

MUTUAL LIFE, HEALTH, AND ACCIDENT INSURANCE CORPORATIONS.

§ 437. Capital stock. Guarantee fund.
§ 438. Of what guarantee fund shall consist.
§ 439. What constitutes, and deficiency in fixed capital.
§ 440. Declaration of fixed capital to be filed.
§ 441. Guarantee notes and interest, how disposed of.
§ 442. Insured to be entitled to vote, when.
§ 443. Number of directors may be altered, how.
§ 444. Investment of capital stock.
§ 445. Limitations to the holding of stock and in other particulars may be provided for in by-laws.
§ 446. Premiums, how payable.
§ 447. Insurance corporations to furnish data to insurance commissioner. Employment of actuary.
§ 448. No stamp required on accident insurance contract.
§ 449. Valuation of policies, retaliatory provisions.
§ 450. Policy to contain what provisions.
§ 451. Fraternal societies exempt from insurance laws.
§ 452. Dividends, how made.

§ 437. Capital stock. Guarantee fund. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than two hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect, nothing in this section shall be deemed to contravene any of the provisions of section four hundred and fifty-one. En. March 21, 1872. Am'd. 1905, 183.

Cal. Rep. Cit. 121, 320; 121, 321; 121, 324.

Act relating to life, health, accident and annuity or endowment insurance: See post, Appendix, title Insurance.

Incorporation of mutual insurance companies: See post, Appendix, title Insurance.

§ 438. Of what guarantee fund shall consist. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved

by the board of directors and by each other, payable to the corporation or its order, and at such times in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements as the board of directors prescribed; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars, exclusive of interest. Such notes must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred, or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of persons dealing with it, and constitute the assets of the corporation, liable for all its debts, obligations and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses, and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock. En. March 21, 1872.

§ 439. What constitutes, and deficiency in fixed capital. The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it, or to be expended in any manner otherwise than may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind canceled or provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up. En. March 21, 1872.

§ 440. Declaration of fixed capital to be filed. Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary, if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with

the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon, or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same. En. March 21, 1872.

§ 441. Guarantee notes and interest, how disposed of. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund, unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate. En. March 21, 1872. Am'd. 1873-4, 210.

§ 442. Insured to be entitled to vote, when. After the filing of the declaration of the fixed capital, as in this article provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors, and have one vote for each one thousand dollars insured by their policies, respectively. En. March 21, 1872.

Cal. Rep. Cit. 74, 492.

§ 443. Number of directors may be altered, how. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five. En. March 21, 1872.

§ 444. Investment of capital stock. Life, health and accident insurance corporations may invest their capital stock as follows:

§444
Rep'd.

1. In loans upon unencumbered and improved real property within the state of California, which shall be worth at the time of the investment at least forty per cent more than the sum loaned.

2. In the purchase of or loans upon interest-bearing bonds, and other securities of the United States and of the state of California.

3. In the purchase of or loans upon interest-bearing bonds of any of the other states of the union, or of any county, or incorporated city, or city and county in the state of California.

4. In the purchase of or loans upon any stocks of corporations formed under the laws of this state, except of mining corporations, which shall have, at the time of the investment, a value, in the city and county of San Francisco, of not less than sixty per cent of their par value, and shall be rated as first-class securities; but no loans shall be made on any securities specified in subdivisions three and four of this section, in any amount beyond sixty per cent of the market value of the securities, nor shall any loan be made on the stock of the corporation, or notes or other obligations of its corporators. En. March 21, 1872. Am'd. 1873-4, 211.

§ 445. Limitations to the holding of stock and in other particulars may be provided for in by-laws. The corporation, may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part. En. March 21, 1872.

§ 446. Premiums, how payable. All premiums must be payable wholly in cash, or one-half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties. En. March 21, 1872.

§ 447. Insurance corporations to furnish data to insurance commissioner. Employment of actuary. Every life insurance corporation organized under the laws of this state must, on or before the first day of February of each

year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other state or country, and doing business in this state, must, upon the written requisition of the commissioner, furnish him, at such time as he may designate, the requisite data for determining the valuation of all of its policies then outstanding; such valuations must be based upon the rate of mortality established by the American experience life table and interest at four and one-half per cent per annum; provided, that from and after the thirty-first day of December, A. D. one thousand eight hundred and ninety-one, such valuations must be based upon the rate of mortality established by the combined experience or actuaries' table of mortality, with interest at the rate of four per cent per annum. When the laws of any other state or territory require of a life insurance company organized under the laws of this state a valuation of its outstanding policies by any standard of valuation different from that named in this section, the insurance commissioner is hereby authorized to make such valuation for use in such other state or territory, and to issue his certificate in accordance therewith. For the purpose of making the valuations, the insurance commissioner is authorized to employ a competent actuary, whose compensation for such valuations shall be three cents for each thousand dollars of insurance, to be paid by the respective companies whose policies are thus valued. En. March 21, 1872. Am'd. 1873-4, 211; 1889, 35.

§ 448. No stamp required on accident insurance contract. En. March 12, 1872. Rep. 1905, 571.

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his section exempts accident insurance companies from stamp duties, but as there are no such duties under the law as it now stands the section is unnecessary.—Code Commissioner's Note.

§448 Repl'd.

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§ 449. Valuation of policies, retaliatory provisions. When the certificate of the insurance commissioner of this state, of the valuation of the policies of a life insurance company, as provided in section four hundred and forty-seven of the Civil Code of this state, issued to any company organized under the laws of this state, shall not be accepted by the insurance authorities of any other state, in lieu of a valuation of the same, by the insurance officer of such other state, then every company organized under the laws of such other state doing business in this state, shall be required to have a separate valuation of its poli-

§449 Repl'd

cies made under the authority of the insurance commissioner of this state, as provided in section four hundred and forty-seven of the Civil Code. En. Stats. 1873-4, 270.

§ 450. Policy to contain what provisions. Every contract or policy of insurance hereafter made by any person or corporation organized under the laws of this state, or under those of any other state or country, with and upon the life of a resident of this state, and delivered within this state, shall contain, unless specifically contracted between the insurer and the insured for tontine insurance, or for other term or paid-up insurance, a stipulation that when, after three full annual premiums shall have been paid on such policy, it shall cease or become void solely by the nonpayment of any premium when due, its entire net reserve, by the American experience mortality, and interest at four and one-half per cent yearly, less any indebtedness to the company on such policy, shall be applied by such company as a single premium, at such company's published rates in force at the date of original policy, but at the age of the insured at time of lapse, either to the purchase of nonparticipating term insurance for the full amount insured by such policy, or upon the written application by the owner of such policy, and the surrender thereof to such company within three months from such nonpayment of premium, to the purchase of a nonparticipating paid-up policy, payable at the time the original policy would be payable if continued in force; both kinds of insurance to be subject to the same conditions, except as to payment of premiums, as those of the original policy. It may be provided, however, in such stipulation, that no part of such term insurance shall be due or payable, unless satisfactory proofs of death be furnished to the insuring company within one year after death, and that if death shall occur within three years after such nonpayment of premium, and during such term of insurance, there shall be deducted from the amount payable the sum of all the premiums that would have become due on the original policy if it had continued in force. If the reserve on endowment policies be more than enough to purchase temporary insurance, as aforesaid, to the end of the endowment term, the excess shall be applied to the purchase of pure endowment insurance, payable at the end of the term, if the insured be then living. If any life insurance corporation or company shall deliver to any person in this state a policy of insurance upon the life of any person residing in this state, not in conformity with the provisions of this section, the right of such corporation or company to trans-

act business in this state shall thereupon and thereby cease and terminate, and the insurance commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this state, and publish such revocation, daily, for the period of two weeks, in two daily newspapers, one published in the city of San Francisco and the other in the city of Sacramento. En. Stats. 1873-4, 271. Am'd. 1877-8, 82; 1880, 91.

Cal. Rep. Cit. 123, 679; 123, 680; 129, 458; 129, 459; 129, 460; 139, 335.

§ 451. Fraternal societies exempt from insurance laws. All associations or secret orders, and other benevolent or fraternal co-operative societies, incorporated or organized for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to its members, or to the family of deceased members, and not for profit, are declared not to be insurance companies in the sense and meaning of the insurance laws of this state, and are exempt from the provisions of all existing insurance laws of this state. En. Stats. 1873-4, 271. Am'd. 1877-8, 82. Rep. 1880, 92. En. Stats. 1885, 221.

§451 Repl'd. Stats. 1905, 412

Cal. Rep. Cit. 121, 321; 133, 691.

§ 452. Dividends, how made. No corporation formed under the laws of this state, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock;

2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes;

3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American experience table of mortality, and interest at the rate of four and one-half per cent per annum. En. Stats. 1877-8, 83. Rep. 1880, 92. En. 1905, 571.

See note to § 431, ante.

CHAPTER IV.

New chapter added March 20, 1905. Stats. 1905, 411.

MUTUAL BENEFIT AND LIFE ASSOCIATIONS.

§ 452a. Formation of the association.
§ 453. Levying of assessments. By-laws which may be made.

§ 452a. Formation of the association. Associations of not exceeding one thousand persons may be formed for the

purpose of paying to the nominee of any member a sum, upon the death of the member, not exceeding three dollars for each member of the association. Such association may be formed by filing articles of incorporation in the office of the clerk of the county in which the principal place of business is situated and a certified copy of such articles of incorporation, duly certified by the county clerk, in the office of the secretary of state. Such articles must state the name of the corporation, its general purposes, its principal place of business, its term of existence, not exceeding fifty years, the names and residences of the directors selected or appointed to serve for the first year, and must be signed and verified as required by sections two hundred and ninety-two and five hundred and ninety-four. En. Stats. 1905, 411.

The statute of 1873-4, page 745, as amended by the statutes of 1880, page 25, and 1901, page 6, relating to mutual benefit associations, is codified in the above section, and a new chapter, entitled "Mutual Benefit and Life Associations," is added, to consist of sections 452a and 453.—Code Commissioner's Note.

§ 453. Levying of assessments. By-laws which may be made. Each association provided for in this chapter may, on the death of a member, levy an assessment on the surviving members of not exceeding three dollars for each member, and collect and pay the same to the nominee of such decedent, and may also provide for the payment of such annual payments by members as may be deemed just, but no member must be subject to any annual assessment in excess of that established when he joined the association. The association may make such by-laws not inconsistent with the laws of the state as may be necessary for its government and the transaction of its business; may, by its name, sue and be sued; loan such funds as it may have on hand; and own sufficient real estate for its business purposes and such as it may be necessary to purchase on foreclosure of its mortgages. En. Stats. 1905, 411.

See note to § 452a, ante.

CHAPTER V.

New chapter added March 21, 1905. Stats. 1905, 571.

CORPORATIONS TO DISCOVER FIRE AND SAVE PROPERTY AND HUMAN LIFE FROM DESTRUCTION THEREBY.

§ 453a. Powers of the corporation.
§ 453b. Right of way of corporation and its officers when running to fires.
§ 453c. Yearly meeting of corporation, notice to be given thereof, and proceedings which may be authorized thereat.

§ 453a. Powers of the corporation. Any corporation of underwriters heretofore organized and now existing, or which may be hereafter organized under the laws of this state, for the purpose of discovering and preventing fires and of saving property and human life from conflagration, and doing business within any municipal corporation of this state, has power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it is, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof deems to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire. Nothing in this chapter must be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; nor can any act of such corps justify any owner of any building or property in abandoning such building or property. En. Stats. 1905, 571.

The statute of 1875-6, page 689, concerning the powers of underwriters, as amended by the statute of 1897, page 223, is codified in the sections above named, a new chapter being added, entitled "Corporations to Discover Fire, and to Save Property and Human Life From Destruction Thereby," to consist of sections 453a, 453b, and 453c.—Code Commissioner's Note.

§ 453b. Right of way of corporation and its officers when running to fires. Such corporation, with its officers and corps, when running to a fire with its horses, vehicles, and salvage apparatus, has the same right of way as is or may be bestowed by any ordinance of the municipality or law of this state upon the regular fire department of the municipality wherein such corporation is acting; but the rights of such fire department must always be paramount to the rights of such corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing the progress of the apparatus of the fire department of

such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, are equally applicable to any person or persons willfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who willfully or carelessly injures any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department. En. Stats. 1905, 572.

See note to § 453a, ante.

§ 453c. Yearly meeting of corporation, notice to be given thereof, and proceedings which may be authorized thereat. In the month of July, in every year, there must be held a meeting of all corporations created for the purposes specified in this chapter; of which ten days' previous notice must be inserted in at least one daily newspaper published in the municipality, where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented, and shall be entitled to one vote. A majority of the whole number so represented has power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created, and fixing the maximum amount of expenses which may be incurred therefor during the fiscal year next to ensue, which amount must in no case exceed two per centum of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of premiums returned, as received by each, as hereinafter provided, and such assessment is collectible by and in the name of said corporation, in any court of law in the State of California having jurisdiction, in such manner and at such time or times as said corporation may determine. In order to provide for the payment of persons employed by said corporation, and to maintain

suitable rooms, and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished, semi-annually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement must be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting or affecting such insurance in said municipality, and must be handed to the secretary of said corporation heretofore created or hereafter to be created under the provisions of this chapter within ten days after the first day of July and the first day of January of each year. Said secretary must, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or person engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person within said municipality, and every officer if such insurance company, corporation, association, and every such underwriter, agent, or person, who, for fifteen days after said demand, neglects to render the statement herein provided for, forfeits fifty dollars for the use of said corporation, and also forfeits for its use twenty-five dollars in addition for every day he so neglects after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof. The penalty herein provided for may be sued for and collected, with costs, in any court of law within the state of California having jurisdiction, by and in the name of said corporation. En. Stats. 1905, 572.

See note to § 453a, ante.

CHAPTER VI.

New chapter added March 20, 1905. Stats. 1905, 418.

LIFE, HEALTH, ACCIDENT, AND ANNUITY OR ENDOWMENT INSURANCE ON THE ASSESSMENT PLAN.

§ 453d. Contracts which may be made by, defined.
§ 453e. Formation of corporations; issuing of contracts; investments.
§ 453f. Pre-existing corporations, right of to reincorporate.
§ 453g. Contracts of insurance, contents and effect of.
§ 453h. Reserve and emergency fund.
§ 453i. Foreign corporations, conditions precedent to doing business in this state.
§ 453j. Limitations upon right to issue contracts of insurance.
§ 453k. Exemptions from attachment and execution.
§ 453l. Statements to be filed with the insurance commissioner; proceedings to be taken by him thereon.
§ 453m. Lapsing of policies when forbidden.
§ 453n. Fees and penalties.
§ 453o. Insurance commissioner to present bills for certain expenses.
§ 453p. Exemption of fraternal societies from this chapter.

§ 453d. Contracts which may be made by, defined. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons holding similar contracts, is deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums. En. Stats. 1905, 418.

The above sections are a codification of the statute of 1891, page 126, relating to life, health, accident, and annuity or endowment insurance on the assessment plan. They are placed in a new chapter, entitled "Life, Health, Accident and Annuity or Endowment Insurance on the Assessment Plan."—Code Commissioner's Note.

§ 453e. Formation of corporations; issuing of contracts; investments. Corporations may be formed to carry on the business of mutual insurance upon the assessment plan, and are subject only to the provisions of this chapter. No such corporation must issue contracts of insurance until at least two hundred persons have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand dollars. This sum must be invested in bonds or securities, approved by the insurance commissioner of this state, or

deposited in some bank in this state where it will earn interest. Said bonds or securities, or evidences of such deposit, must be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum must be held in trust for the contract-holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation must also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this chapter; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor must the commissioner approve any name or title so closely resembling another as to mislead the public. No corporation formed hereunder has legal existence after one year from the date of its articles, unless its organization has been completed and business commenced; nor must any corporation or individual solicit, or cause to be solicited, any business, until such corporation has complied with the provisions of section six hundred and thirty-three of the Political Code. Nothing contained in this chapter shall be construed to exempt any corporation from the provisions of sections two hundred and ninety-six and two hundred and ninety-nine of this code. En. Stats. 1905, 418.

See note to § 453d, ante.

§ 453f. Pre-existing corporations, right of to reincorporate. Any existing corporation engaged in the business of life, health, accident, or endowment insurance on the assessment plan may reincorporate under the provisions of this code and chapter, but is not obliged to do so, and may, without such reincorporation, exercise the rights, powers, and privileges conferred by this chapter. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453g. Contracts of insurance, contents and effect of. Every contract of insurance issued by such corporation must specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments must be made. Unless the contract is invalidated by fraud or by breach of its conditions, the corporation is obligated to pay the beneficiary the amount or amounts

specified in its contract at the time or times therein named, and such indebtedness is a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, of a final judgment, unless waiver is made by the beneficiary, constitutes a forfeiture of the right to do business. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453h. Reserve and emergency fund. Every domestic corporation, organized to do or doing business of insurance on the assessment plan, must accumulate a reserve or emergency fund, which must, at all times, be not less than the largest benefit contracted to be paid by it to any one person. Every corporation organized under the provisions of this chapter must accumulate such fund within a year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, must be invested and deposited, as provided in section four hundred and fifty-three e, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section four hundred and fifty-three e constitutes a part of the reserve required by this section, at the option of such corporation. When any such corporation discontinues business, this fund must be returned to such corporation, or disposed of as may be determined by the superior court of the county in which is its principal place of business. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453l. Foreign corporations, conditions precedent to doing business in this state. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, comply with the provisions of sections four hundred and five and four hundred and eight of this code, and deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon

whom binds the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contract of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner must thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof must be given by the insurance commissioner by publication in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts must be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this chapter, like license, fees, taxes, or penalties are imposed upon corporations of the same kind and their agents of such state or country doing business in this state. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453j. Limitations upon right to issue contracts of insurance. No corporation doing business under this chapter, except accident or casualty corporations, must issue a contract of insurance upon the life of any person under fifteen nor over sixty-one years of age. Every such contract of insurance must be founded upon written application therefor, and, except where the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less, such application must be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, showing the applicant to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employee, examining physician, or

other person, making a false or fraudulent statement to any corporation doing business under this chapter, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, is guilty of a misdemeanor; and any person who makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract-holder, in any such corporation for the purpose of procuring or aiding the beneficiary or beneficiaries or contract-holder in procuring the payment of a benefit named in the contract, is guilty of perjury. En. Stats. 1905, 420.

See note to § 453d, ante.

§ 453k. Exemptions from attachment and execution. The money, benefit, annuity, endowment, charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this chapter, is not liable to attachment or other process, nor to be seised, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract-holder or any beneficiary named thereunder. En. Stats. 1905, 421.

See note to § 453d, ante.

§ 453l. Statements to be filed with the insurance commissioner; proceedings to be taken by him thereon. Every corporation, whether domestic or foreign, doing the business of effecting insurance on the assessment plan must, annually, on or before the first day of February, file with the insurance commissioner, in such form as he may prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, has the power of examination into the affairs of any domestic corporation doing business or claiming to do business under this chapter, at any time, in his discretion, and must make such examination at least once a year. If he, after an examination of the affairs of a corporation, finds that it is not doing its business in conformity to this chapter, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of notice of default, pay its obligations, he must cite the president, secretary, manager, or general agent of the corporation, or all of them, to appear before him, stating the time and place, to show cause why the authority of the corporation

to do business should not be revoked, and if cause is not shown, then he must report the facts to the attorney general of the state, who must commence proceedings in the proper court to restrain the corporation from doing any further business. En. Stats. 1905, 421.

See note to § 453d, ante.

§ 453m. Lapsing of policies when forbidden. No policy or certificate issued by any corporation or association doing business under the provisions of this chapter lapses for the nonpayment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice must be mailed at least fifteen days before the assessment is due; provided, that such corporations doing business under this chapter as collect specific amounts at specific dates, as contained in the contract, are not compelled to send such notices; and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, is conclusve evidence of the mailing of such notice. En. Stats. 1905, 421.

See note to § 453d, ante.

§ 453n. Fees and penalties. The fees for filing statements, certificates, or other documents required by this chapter, or for any service or act of the insurance commissioner, and the penalties for any violation of this chapter, must, except as otherwise provided here, be the same as provided in the laws of this state relating to life insurance companies, and must be disposed of as provided by such laws. En. Stats. 1905, 422

See note to § 453d, ante.

§ 453o. Insurance commissioner to present bills for certain expenses. For all lawful expenses under this chapter, or by reason of any of its provisions, in the prosecution of any suit or proceeding, or otherwise, for the enforcement of the provisions of this chapter, the insurance commissioner must present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who may allow the same, and direct payment thereof to be made;

and the state controller must draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, out of the general fund, in addition to the ordinary contingent expense. En. Stats. 1905, 422.

See note to § 453d, ante.

§ 453p. Exemption of fraternal societies from this chapter. The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, nor to any mutual or benefit association organized or formed and composed of members of any such society, lodge, or council exclusively. En. Stats. 1905, 422.

See note to § 453d, ante.

TITLE III.

RAILROAD CORPORATIONS.

Chapter I. Officers and Corporate Stock, §§ 454-459.
II. Enumeration of Powers, §§ 465-478.
III. Business, how Conducted, §§ 479-494.

CHAPTER I.

OFFICERS AND CORPORATE STOCK.

§ 454. Directors to be elected, when.
§ 455. Additional provisions in assessment and transfer of stock.
§ 456. Corporations may borrow money and issue bonds. Limitations of amount.
§ 457. To provide a sinking fund to pay bonds.
§ 458. Capital stock to be fixed.
§ 459. Certificate of payment of fixed capital stock.

§ 454. Directors to be elected, when. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in article II, chapter I, title I, of this part. En. March 21, 1872.

Cal. Rep. Cit. 110, 692; 132, 678.

§ 455. Additional provisions in assessment and transfer of stock. No stock in any railroad corporation is transferable until all the previous calls or installments thereon

have been fully paid in; nor is any such transfer valid, except as between the parties thereto, unless at least twenty per cent has been paid thereon and certificates issued therefor, and the transfer approved by the board of directors. En. March 21, 1872.

§ 456. Corporations may borrow money and issue bonds. Limitation of amount. Railroad corporations may borrow, on the credit of the corporation, and under such regulations and restrictions as the board of directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad, with its equipments, and for the purchase of all necessary rolling stock and all else relative thereto, and may issue promissory notes therefor, or may issue and dispose of bonds to raise moneys necessary to pay therefor, at a rate of interest not exceeding ten per cent per annum; and may also issue bonds or promissory notes, at the same rate of interest in payment of any debts or contracts for constructing and completing their road, with its equipments and rolling stock, and all else relative thereto, and for the purchase of railroads and other property within the purpose of the corporation. The amount of bonds, or promissory notes, issued for such purposes must not exceed in all the amount of their capital stock; and to secure the payment of such bonds, or notes, they may mortgage their corporate property and franchises, or may secure the payments of such bonds, or notes, by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this state, or of any other state within the United States, that the directors of the railroad corporation may, by unanimous concurrence, select, may be trustees in such deed of trust. En. March 21, 1872. Am'd. 1880, 10; 1897, 73; 1899, 57.

Cal. Rep. Cit. 109, 595; 124, 328; 124, 329; 125, 409; 125, 454.

Debt exceeding available means, penalty: See Pen. Code, sec. 566.

§ 457. To provide a sinking fund to pay bonds. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or

owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt. En. March 21, 1872.

Cal. Rep. Cit. 125, 454.

§ 458. Capital stock to be fixed. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating, and maintaining the road, by a two-third vote of the stockholders the capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state. En. March 21, 1872.

Cal. Rep. Cit. 65, 209.

§ 459. Certificate of payment of fixed capital stock. Within thirty days after the payment of the last installment of the fixed capital stock of any railroad corporation organized under this title and part, the president and secretary, and a majority of the directors thereof, must make, subscribe, and file in the office of the secretary of state a certificate stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary. En. March 21, 1872.

CHAPTER II.

ENUMERATION OF POWERS.

§ 465. Enumeration of powers:
1. To survey road.
2. May accept real estate.
3. May acquire real estate.
4. Lay out road, how wide.
5. Where may construct road.
6. May cross or connect roads.
7. May purchase land, timber, stone, gravel, etc.
8. Carry persons and freight.
9. Erect necessary buildings.
10. Regulate time and freights, subject to legislation.
11. Regulate force and speed.
12. Purchasing or acquiring franchises of other railroads.
§ 465a. What motive power may be used; authority must be obtained.
§ 466. Map and profile to be filed.
§ 467. May change line of road.
§ 468. Forfeiture of franchise.
§ 468. Construction must be commenced and continued, operation.
§ 469. Crossings and intersections. Condemnation.
§ 470. Not to use streets, alleys, or water in cities or towns, except by a two-third vote of the city or town authorities.

§ 471. Railroads through cities not to charge fare to and from points therein. (Repealed.)
§ 472. When crossing railroads or highways, how other lands are acquired.
§ 473. Corporations may consolidate. Publication of notice. Copy to be filed.
§ 473a. Right to lease or use another road in common.
§ 474. State lands granted for use of corporations.
§ 475. Grant not to embrace town lots.
§ 476. Wood, stone, and earth may be taken from state lands.
§ 477. Lands to revert to state, when.
§ 478. Selections made, how proved and certified to.

§465 Am'd.

§ 465. Enumeration of powers. Every railroad corporation has power:

1. **To survey road.** To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents and employees may enter upon the lands or waters of any person, subject to liability for all damages which they may do thereto;

2. **May accept real estate.** To receive, hold, take and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance and accommodation of such railroad;

3. **May acquire real estate.** To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots and other purposes necessary to successfully work and conduct the business of the road;

4. **Lay out road, how wide.** To lay out its road, not exceeding nine rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same;

5. **Where may construct road.** To construct their roads across, along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch or flume thus

intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

6. **May cross or connect roads.** To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made thereof, or the points or the manner of such crossings, intersections and connections, the same shall be ascertained and determined as is provided in title VII, part III, Code of Civil Procedure (secs. 1237-1263);

7. **May purchase land, timber, stone, gravel, etc.** To purchase lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in title VII, part III, Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;

8. **Carry persons and freight.** To carry persons and property on their railroad, and to receive tolls or compensation therefor;

9. **Erect necessary buildings.** To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business;

10. **Regulate time and freights, subject to legislation.** To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law and subject to alteration, change or amendment by the legislature at any time;

11. **Regulate force and speed.** To regulate the force and speed of their locomotives, cars, trains or other

machinery used and employed on their road, and to establish, execute and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations;

12. **Purchasing or acquiring franchises of other railroads.** To purchase, lease or acquire the franchises, rights and property, or any part thereof, of any railroad corporation, leasing or owning any railroad outside of the state of California, and to operate the same, and to use the franchises of any such road, and to build and operate extensions thereof; provided that nothing herein shall authorize any corporation to purchase the franchises, rights and property of any railroad operated in competition with it; and to purchase, acquire and hold the stocks, bonds or other securities of any railroad corporation organized under the laws of this state or of any other state or territory, with full power to sell the same; provided that nothing herein will authorize any corporation to purchase the stock of any railroad corporation operated in competition with it. En. March 21, 1872. Am'd. 1903, 245.

Cal. Rep. Cit. 67, 432; 92, 645; 111, 227. Subd. 1—67, 431; 129, 10; 134, 415. Subd. 2—129, 10. Subd. 3—53, 227; 129, 10. Subd. 4—53, 227; 67, 431; 134, 415. Subd. 5—69, 206; 92, 645; 93, 265; 142, 392. Subd. 6—91, 452. Subd. 7—53, 228; 67, 431; 134, 414. Subd. 8—142, 392. Subd. 9—142, 392. Subd. 11—142, 392.

Exceeding limit upon power to acquire realty: See ante, sec. 360.

Eminent domain: See Code Civ. Proc., secs. 1237-1268.

Subd. 8. Rates of charges: See post, sec. 489. Establishment of rates by railroad commissioners: See Const. Cal., art. XII, sec. 22.

Subd. 10. Regulating time and manner of transportation, timetables of starting: See post, sec. 481.

§ 465a. What motive power may be used; authority must be obtained. Every person or corporation now or hereafter authorized to operate a railroad by steam motive power, is also authorized to use electricity or compressed air, or both, either with or without such steam, for the purpose of propelling cars or trains on such railroad or upon any portion thereof. In incorporated cities, towns, or cities and counties having more than five thousand inhabitants, authority must be obtained from the legislative authority thereof. En. Stats. 1905, 574.

This section is a codification of the statute of 1893, page 208, relating to the operation of railroads.—Code Commissioner's Note.

§ 466. Map and profile to be filed. Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested. En. March 21, 1872.

Cal. Rep. Cit. 67, 432.

§ 467. May change line of road. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, section 465, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of [on] file, and may proceed in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location as herein provided must be so run as to avoid any points named in their articles of incorporation. En. March 21, 1872.

Changing location: See, ante, sec. 465, subd. 7.

§ 468. Construction must be commenced and continued; operation. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited. After the completion of any railroad, or any part thereof, capable of being operated, its owner must operate it, and upon his failure to keep it, or any part thereof, in full oper-

ation for the period of six months, his right to operate it in whole or in part, as the case may be, is forfeited, and the lands occupied for the purposes of the road, so far as the same is not operated, revert to the original owners or their successors in interest. A railroad is in full operation when one passenger train, or one mixed, is run over it once a day in each direction and a sufficient number of freight trains to accommodate the traffic on the road. If a railroad is wholly constructed at an elevation of five thousand feet or more above the level of the sea, its owner is not required to maintain and operate it, nor to run passenger or other trains thereon, between the fifteenth of October of any year and the fifteenth of May of the year following. This section must not be construed to require the operation of a road when prevented by the act of God, nor when the operation of the road, together with its branch and trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating it in connection with its branch and trunk lines. The railroad commissioners have the power to examine and determine whether a railroad, together with its branch and trunk lines, yields income sufficient to operate the same. En. March 21, 1872. Am'd. 1905, 574.

The amendment consists in codifying and adding to the section the provisions of the statute of 1880, page 43, to compel the operation of railroads, and of the statute of 1897, page 5, to provide for the management and operation of railroads above certain elevations.—Code Commissioner's Note.

Cal. Rep. Cit. 92, 646.

Organizing and commencing work: See general provision, ante, sec. 358.

Act enabling railroad companies to complete railroads: See post, Appendix, title Railroads.

§ 469. Crossings and intersections. Condemnation. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting

and adjusting the rails, the condemnation of the right of way over the one for the use of the other road, may be had in proceedings under title VII, part III, Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases. En. March 21, 1872.

Right of eminent domain: Code Civ. Proc., secs. 1237-1263.

Crossings and intersections: See ante, sec. 465, subd. 6.

§ 470. Not to use streets, alleys, or water in cities or towns, except by a two-third vote of the city or town authorities. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-thirds vote of the town or city authority from which the right must emanate. En. March 21, 1872.

Cal. Rep. Cit. 69, 206; 92, 645; 105, 94; 109, 319.

§ 471. Railroads through cities not to charge fare to and from points therein. (Repealed.) En. March 21, 1872. Am'd. 1875-6, 76. Rep. 1877-8, 84.

§ 472. When crossing railroads or highways, how other lands are acquired. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in title VII, part III, Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation. En. March 21, 1872.

§ 473. Corporations may consolidate. Publication of notice. Copy to be filed. Any railroad corporation incorporated under the laws of this state may consolidate with one or more railroad corporations incorporated under the laws of this state, or under the laws of any other state or territory of the United States, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon

such terms and in such manner as may be agreed upon by their respective boards or directors; provided, no such consolidation shall take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation "articles of incorporation and consolidation" must be prepared, setting forth: First, the name of the new corporation; second, the purpose for which it is formed; third, the place where its principal business is to be transacted; fourth, the term for which it is to exist, which shall not exceed fifty years; fifth, the number of its directors (which shall not be less than five or more than thirteen) and the names and residences of the persons appointed to act as such until their successors are elected and qualified; sixth, the amount of its capital stock (which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers), and the number of shares into which it is divided; seventh, the amount of stock actually subscribed, and by whom; eighth, the termini of its road or roads and branches; ninth, the estimated length of its roads or roads and branches; tenth, the names of the constituent corporations, and the terms and conditions of consolidation in full. Said articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed as aforesaid said articles must be filed in the office of the county clerk of the county in which the original articles of incorporation of either of the consolidating corporations are filed, and a copy of the articles of incorporation and consolidation certified by such county clerk must be filed in the office of the secretary of state, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights

in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well out of any other property belonging to the consolidated corporation. En. March 21, 1872. Am'd. 1900-01, 327.

Cal. Rep. Cit. 67, 61; 76, 405; 76, 407; 98, 216; 109, 577; 109, 583; 109, 584; 109, 586; 109, 593; 109, 601; 110, 504; 119, 343; 147, 666.

§ 473a. Right to lease or use another road in common. Railroad corporations doing business in this state and organized under any law of this state or the United States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad. En. Stats. 1905, 575.

Section 2 of the statute of 1880, page 21, authorizing railway and other corporations organized under the laws of this state or of any state or territory of the United States to do business in this state, on equal terms, is codified in this section.—Code Commissioner's Note.

§ 474. State lands granted for use of corporations. There is granted to every railroad corporation the right of way for the location, construction and maintenance of their

necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width. En. March 21, 1872.

§ 475. Grant not to embrace town lots. The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof. En. March 21, 1872.

§ 476. Wood, stone, and earth may be taken from state lands. The right to take from any of the lands belonging to the state, adjacent to the works of the corporation, all materials, such as wood, stone, and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations. En. March 21, 1872.

§ 477. Lands to revert to state, when. If any corporation receiving state lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses. En. March 21, 1872.

§ 478. Selections made, how proved and certified to. When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the surveyor general, comptroller of state, and recorder of the county in which the selected lands are situate, a plat of the lands so selected giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor general must so indorse the plat, and issue to the corporation a permit to use the same, unless on petition properly presented to the court, a review is had and such use prohibited. En. March 21, 1872.

Cal. Rep. Cit. 101, 336.

CHAPTER III.

BUSINESS, HOW CONDUCTED.

§ 479. Checks to be affixed to all baggage. Damages.
§ 480. Annual report to be verified. Form of report.
§ 481. Duties of corporation.
§ 482. Corporation to pay damages for refusal.
§ 483. Furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.
§ 484. Corporations to post printed regulations, and not responsible for damages in violation of rules.
§ 485. Fences. To pay damages. Not liable in certain cases. Corporation may recover damages, when.
§ 486. Regulations of trains. Penalty.
§ 487. Passenger refusing to pay fare.
§ 488. Officers to wear badge.
§ 489. Rates of charges.
§ 490. Passenger tickets, how issued, and to be good for six months.
§ 491. Character of rails to be used.
§ 492. Elevated or underground railways.
§ 493. To apply to all railroad companies.
§ 494. Sale of property to another railroad.

§ 479. Checks to be affixed to all baggage. Damages. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation. En. March 21, 1872.

Cal. Rep. Cit. 120, 317.

§ 480. Annual report to be verified. Form of report. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or

acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;

2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;

3. The amount and nature of its indebtedness, and the amount due the corporation;

4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;

5. The amount of freight, specifying the quantity in tons;

6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road;

7. The number and amount of dividends, and when paid;

8. The number of engine-houses and shops, of engines and cars, and their character. En. March 21, 1872.

§ 481. Duties of corporation. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping-places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor. En. March 21, 1872. Am'd. 1905, 575.

The amendment consists in the substitution of the word "its" for "their," and the substitution of "it" for "they," thus correcting errors of grammer.—Code Commissioner's Note.

Cal. Rep. Cit. 134, 414; 142, 392.

Rules and regulations: See post, sec. 484.

Act compelling railroads to operate roads: See post, Appendix, title Railroads.

Act exempting railroad constructed at elevation of five thousand feet from operating roads at certain times: See post, Appendix, title Railroads.

Act organizing railroad commissioners and defining powers: See post, Appendix, title Railroads.

§ 482. Corporation to pay damages for refusal. In case of refusal by such corporation or their agents so to take and transport any passengers or property or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit. En. March 21, 1872.

Cal. Rep. Cit. 142, 392.

§ 483. Furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars. En. March 21, 1872.

Cal. Rep. Cit. 70, 173.

Accommodations to be furnished: See ante, sec. 481.

§ 484. Corporations to post printed regulations, and not responsible for damages in violation of rules. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section. En. March 21, 1872.

Cal. Rep. Cit. 78, 364; 87, 73.

Rules and regulations by carriers of passengers, generally: See, post, sec. 2186.

§ 485, Fences. To pay damages. Not liable in certain cases. Corporation may recover damages, when Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track and property. In case they do not make and maintain such fence, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road which passes through or along the property of the owner thereof, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence, with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the nonconstruction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employees. En. March 21, 1872.

Cal. Rep. Cit. 64, 113; 65, 318; 86, 284; 94, 570; 104, 28; 110, 456; 114, 508; 126, 518; 126, 573; 142, 289.

§ 486. Regulations of trains. Penalty. A bell, of at least twenty pounds' weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam-whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all

damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with. En. March 21, 1872.

Cal. Rep. Cit. 52, 604; 61, 328; 85, 296; 86, 378; 98, 311; 122, 567; 132, 256; 147, 627.

Omitting to ring the bell, a misdemeanor: Pen. Code, sec. 390.

§ 487. **Passenger refusing to pay fare.** If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping-place, or near any dwelling-house, on stopping the train. En. March 21, 1872.

Cal. Rep. Cit. 65, 628; 97, 5; 145, 452.

Refusing to pay fare: See, generally, post, secs. 2187 et seq.

§ 488. **Officers to wear badge.** Every conductor, baggage-master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property. En. March 21, 1872.

Cal. Rep. Cit. 109, 104.

§ 489. **Rates of charges.** Whenever the board of railroad commissioners, in the discharge of its duties, establishes or adopts rates of charges for the transportation of passengers and freight, pursuant to the provisions of the constitution, said board must serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or

corporation affected thereby; and upon such service it is the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station houses, warehouses and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said board must also make such further publication thereof as it deems proper and necessary for the public good. If the party to be served is a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said board, pursuant to the constitution and the laws of this state, must go into force and effect on the twentieth day after service of such schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby. En. March 21, 1872. Am'd. 1905, 575.

Section 11 of the statute of 1880, page 47, defining the powers of the board of railroad commissioners, is substituted in place of the present section 489. The section has been inoperative since the adoption of the Constitution of 1879.—Code Commissioner's Note.

Cal. Rep. Cit. 105, 545; 105, 546; 105, 547; 105, 548; 105, 549; 105, 555.

Asking or receiving illegal fare a misdemeanor: Pen. Code, sec. 525.

Rates of charges on street railroads: Post, sec. 501.

Power of railroad corporations to charge tolls or compensation: Sec. 465, subd. 8.

§ 490. Passenger tickets, how issued, and to be good for six months. Every railroad corporation must provide, and on being tendered the fare therefor fixed, as provided in the preceding section, furnish to every person desiring a passage on their passenger cars a ticket, which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish

tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused all actual damages caused thereby, with reasonable counsel fees expended in recovering same. En. March 21, 1872. Am'd. 1900-01, 600.

Cal. Rep. Cit. 105, 537; 105, 540; 105, 542; 105, 543; 105, 544; 105, 545; 105, 546; 105, 547; 105, 548; 105, 549; 105, 550; 105, 551; 105, 552; 105, 553; 105, 554; 105, 555; 105, 556; 132, 411; 132, 413; 132, 416; 132, 418; 132, 420; 144, 188.

§ 491. Character of rails to be used. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this chapter, must be constructed of the best quality of iron or steel rail, known as T or H rail, or other pattern of equal utility. En. March 21, 1872. Am'd. 1873-4, 212.

Cal. Rep. Cit. 132, 678.

§ 492. Elevated or underground railways. The legislative or other body to whom is intrusted the government of the county, city and county, city, or town, under such regulations, restrictions, and limitations, and upon such terms and payment of license tax as the county, city and county, city, or town authority may provide, may grant franchises for the construction of elevated or underground railroad tracks over, across, or under the streets and public highways of any such county, city and county, city, or town, for the term not exceeding fifty years; provided, that before granting such franchise there shall be presented to such legislative or other body a petition signed by the owners of a majority of the landed property, other than public property, on the line of said elevated portion applied for. En. Stats. 1895, 242.

§ 493. To apply to all railroad companies. The provisions of section four hundred and ninety-two shall apply to any railway corporation heretofore or hereafter incorporated. En. Stats. 1895, 242. Am'd. 1905, 576.

The change consists in the substitution of the words "section four hundred and ninety-two" in place of "act."—Code Commissioner's Note. The section 492 referred to in this section provided for the granting of franchises to construct elevated or underground roads.

§ 494. Sale of property to another railroad. Any railroad corporation, person or persons, firm or corporation, owning any railroad in this state, may sell, convey, and transfer its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of congress; and any other such railroad corporation receiving such conveyance may hold and operate such railroad franchises and property within this state, build and operate extensions and branches thereof, and thereunto exercise the right of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state; provided, that before such sale, conveyance, or transfer shall become operative, an agreement in writing must be executed by the parties thereto, containing the terms and conditions of the purchase and sale, and its execution must be authorized by the board of directors and ratified by three-fourths of the stockholders of each of the railroad companies that are parties to such conveyance and transfer, and said agreement or conveyance shall be recorded in each county through which said road or roads pass in this state; and provided further, that no sale, conveyance, or transfer under this act shall relieve the franchise or property sold, conveyed, or transferred, from the liability of the grantor contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges; provided, that this section shall not authorize any corporation to purchase any railroad property operated in competition with it; and provided further, that any or all established rates for fares and tolls for carrying passengers or freight between any points upon any railroad purchased under the provisions of this act, shall not be increased without the consent of the governmental authority in which is vested by law the power to regulate fares and freights; and provided further, that whenever a railroad corporation, which has purchased any line of road under this act, shall for the purposes of competing with any other common carrier lower its rates for transportation of passengers or freight from one point to another upon such line purchased, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights; and provided further, that for every violation of the provisions of this act on the part of direc-

tors or governing officers of said corporation, the state shall be entitled to recover from such offending railroad company the sum of ten thousand dollars. It is hereby declared to be the duty of the attorney general of the state, in the event of any such violation, to demand and collect from such company the said penalty; and he is hereby authorized and empowered to prosecute all the necessary actions in the name of the people of the state of California against such company in the courts of the state. All money so collected shall be paid into the general fund of this state. En. Stats. 1903, 50.

This was a new section adopted in 1903. There was another section 494 adopted in 1899 covering the same ground. This earlier section, statutes 1899, 178, was repealed. Statutes 1905, 576.

In 1889 a section relating to the sale of railroads was added to the Code, and numbered 494. In 1903 a new section was added, also numbered 494, and clearly intended to supersede the old section 494. Accordingly, it is thought advisable to repeal the earlier section.—Code Commissioner's Note.

TITLE IV.

STREET RAILROAD CORPORATIONS.

§ 497. Authority to lay street railroad track, how obtained. Limitations and restrictions.
§ 498. Restrictions and limitations. Manner of constructing tracks.
§ 499. Two corporations may use the same track.
§ 500. Crossing tracks. Obstructions.
§ 501. Rates of fare, speed, etc.
§ 502. Time allowed for commencing and completing work. Penalty. Extension of time.
§ 503. May make further regulations and rules.
§ 504. Penalty for overcharging.
§ 505. To provide and furnish passenger tickets. Penalty.
§ 506. Proof of agency.
§ 507. Reserved rights.
§ 508. License to be paid to city or town.
§ 509. Track for grading purposes.
§ 510. Provisions of title III applicable to street railroads.
§ 511. Title applicable to natural persons alike with corporations.

§ 497. Authority to lay street railroad track, how obtained. Limitations and restrictions. Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, may be obtained for a term of years not exceeding fifty, from the trustees, council, or other body to whom is intrusted the government of the city, city and county or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by electricity, horses, mules, or by wire ropes running under the streets and moved by stationary engines, unless for special reasons in this title hereinafter mentioned; provided, however, that such board or body in granting the right, or at any time after the same is granted, to use electricity or any other of said modes, shall have power to impose such terms, restrictions, and limitations as to the use of streets and the construction and mode of operating such electric and other roads as may, by such board or body, be deemed for the public safety or welfare. En. March 21, 1872. Am'd. 1875-6, 76; 1891, 12.

Cal. Rep. Cit. 57, 167; 57, 175; 57, 176; 90, 38; 90, 39; 91, 340; 91, 454; 105, 92; 105, 93; 105, 94; 117, 611; 117, 616; 142, 228.

Act limiting time within which franchise may be granted: See post, Appendix, title Railroads.

Act validating ordinance granting franchise: See post, Appendix, title Railroads.

Act empowering railroad to use electricity or steam: See post, Appendix, title Railroads.

§ 498. Restrictions and limitations. Manner of constructing tracks. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions, except in the cases of prismoidal or other elevated railways. In such cases, said railway shall be required to be constructed in such a manner as will present the least obstruction to the freedom of the streets on which it may be erected when allowed by the granting power:

First, to construct their tracks on those portions of streets designated in the ordinance granting the right, which must be, as nearly as possible, in the middle thereof.

Second, to plank, pave, or macadamize the entire length of the street used by their track, between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings.

Third, that the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely. En. March 21, 1872. Am'd. 1873-4, 212; 1875-6, 77.

Cal. Rep. Cit. 57, 518; 87, 599; 89, 309; 91, 454; 146, 638.

§ 499. Two corporations may use the same track. Two lines of street railway, operated under different managements, may be permitted to use the same street, each paying an equal portion for the construction of the tracks and appurtenances used by said railways jointly; but in no case must two lines of street railway, operated under different managements, occupy and use the same street or tracks for a distance of more than five blocks consecutively. En. March 21, 1872. Am'd. 1891, 13.

Cal. Rep. Cit. 54, 74; 54, 75; 57, 168; 57, 170; 57, 177; 91, 452; 91, 454; 115, 297; 129, 182; 135, 659.

§ 500. Crossing tracks. Obstructions. Any proposed railroad track may be permitted to cross any track already constructed, the crossing being made as provided in chapter II, title III, of this part. In laying down the track and

preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days. En. March 21, 1872.

Crossing other railroads: See ante, secs. 465 et seq.

§ 501. Rates of fare, speed, etc. The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each passenger per trip of any distance in one direction, either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense. En. March 21, 1872. Am'd. 1903, 172.

Cal. Rep. Cit. 97, 563; 134, 485.

Rates of fare for railroad corporations: See sec. 489.

Act limiting and fixing rates of fares: See post, Appendix, title Railroads.

Act permitting letter carriers to ride free: See post, Appendix, title Railroads.

§ 502. Time allowed for commencing and completing work. Penalty. Extension of time. Work to construct the railroad must be commenced in good faith within not more than one year from the date of the taking effect of the ordinance granting the right of way, and said work must be completed within not more than three years after the taking effect of such ordinance; provided, that the governing body of such municipal corporation at the time of granting said right of way shall have the power to fix the time for either the commencing or completion, or both, of said work; not, however, to a time less than six months for commencing, and not less than eighteen months for completing the same. A failure to comply with either of the foregoing provisions of this section, or with either of the provisions of the ordinance granting said right of way, works a forfeiture of the right of way, and also of the franchise, unless the uncompleted portion is abandoned by the person or corporation to whom said right of way is granted, with the consent of the authorities granting the right of way, such abandonment and consent to be in

writing. The authority granting the right of way shall have the power to grant an extension of time for the completion of said work, if it appear that the work has been commenced within the time fixed, and prosecuted in good faith; but no extension of time shall be granted for the commencement of said work, and shall not be granted for more than one year for the completion of the same. All extensions of time shall be in writing, and made a matter of record in the municipality. Provided further, that this act shall not in any way affect any franchise or right of way granted before its passage. En. March 21, 1872. Am'd. 1895, 17.

Cal. Rep. Cit. 57, 178; 91, 341; 101, 337; 117, 611; 117, 612; 117, 616.

Forfeiture for failure to commence work, of railroad corporations: See sec. 468; generally, see sec. 358.

§ 503. May make further regulations and rules. Cities and towns in or through which street railroads run may make such further regulations for the government of such street railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein. En. March 21, 1872.
Cal. Rep. Cit. 128, 436.

§ 504. Penalty for overcharging. Any corporation, or agent or employee thereof, demanding or charging a greater sum of money for fare on the cars of such street railroad than that fixed, as provided in this title, forfeits to the person from whom such sum is received, or who is thus overcharged, the sum of two hundred dollars, to be recovered in a civil action, in any justice's court having jurisdiction thereof, against the corporation. En. March 21, 1872.

§ 505. To provide and furnish passenger tickets. Penalty. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore described, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section; provided, that the provisions of this section shall not apply to such street railroad corpora-

tions as charge but five cents fare. En. March 21, 1872. Am'd. 1873-4, 213; 1883, 84.

§ 506. Proof of agency. Upon the trial of an action for any of the sums forfeited, as provided in the two preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket, or check, was at the time of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employee of the corporation, to receive the money and give the ticket or check mentioned. En. March 21, 1872. Am'd. 1873-4, 213.

§ 507. Reserved rights. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter, or repair the streets or highways, is reserved to the corporation, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible, and, if required, the corporation must shift its rails so as to avoid the obstructions made thereby. En. March 21, 1872. Am'd. 1873-4, 214.

§ 508. License to be paid to city or town. Each street railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority. En. March 21, 1872.

Licenses: See Pol. Code, secs. 3356 et seq.

§ 509. Track for grading purposes. The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city or town, or city and county, or supervisors of any city or county, but no such track must remain more than three years upon any one

street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public. The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used on such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the right to rescind the ordinance at any time reserved. En. March 21, 1872.

§ 510. Provisions of title III applicable to street railroads. Street railroads are governed by the provisions of title III of this part, so far as they are applicable, unless such railroads are therein specially excepted. En. March 21, 1872. Am'd. 1873-4, 214.

Cal. Rep. Cit. 109, 577; 109, 583; 109, 584; 125, 454.

Title III: See secs. 454 et seq.

§ 511. Title applicable to natural persons alike with corporations. When a street railroad is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations. En. March 21, 1872.

Cal. Rep. Cit. 98, 314; 132, 678.

TITLE V.

WAGON ROAD CORPORATIONS.

§ 512. Three commissioners to act with surveyor.
§ 513. Survey and map to be filed and approved by supervisors.
§ 514. Tolls, etc., to be collected. Penalty for taking unlawful tolls.
§ 515. No tolls to be charged on highways or public roads.
§ 516. Rates of toll to be posted at gate.
§ 517. Toll gatherer may detain persons until they pay toll.
§ 518. Toll gatherer not to detain any person unnecessarily.
§ 519. Persons avoiding tolls to pay five dollars.
§ 520. Penalties for trespasses on property of corporation.
§ 521. Revenue, how appropriated. Tolls to be reduced, etc
§ 522. May mortgage and hypothecate corporate property.
§ 523. This title applies to natural persons as well as corporations.
§ 524. Franchises for construction of roads for horses or vehicles.

§ 512. Three commissioners to act with surveyor. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road to the supervisors, as provided in the succeeding section. En. March 21, 1872. Am'd. 1873-4, 214.

Cal. Rep. Cit. 95, 86.

Wagon road corporation: See ante, secs. 291-294.

§ 513. Survey and map to be filed and approved by supervisors. When the route is surveyed, a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journals of the board and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highway so taken and used as to make the same as good as before the appropriation thereof; and must so construct all crossings of

public highways over and by its road, and its toll gates, as not to hinder or obstruct the use of the same. En. March 21, 1872. Am'd. 1905, 557.

§ 514. Tolls, etc., to be collected. Penalty for taking unlawful tolls. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate. But in no case must the tolls be more than sufficient to pay fifteen per cent, nor less than ten per cent per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages. En. March 21, 1872. Am'd. 1873-4, 214; 1873-4, 272; 1905, 577.

Cal. Rep. Cit. 88, 633.

This section was also amended by act of March 30, 1874. Amendments 1873-4, p. 214; but by section 287 of that act, p. 269, other laws passed at that session superseded the provisions of that act, leaving the preceding act of March 28, 1874, in force sixty days after its passage.

Sale of franchise under execution: See ante, 388.

Toll roads: Pol. Code, secs. 2779 et seq.

§ 515. No tolls to be charged on highways or public roads. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or anyone transporting property over the same. En. March 21, 1872.

§ 516. Rates of toll to be posted at gate. The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list showing, first, the date when the franchise or privilege under which the right to collect tolls is claimed, was granted and the term of duration of said franchise; second, the date upon which rates of tolls were last fixed by the board of supervisors; and, third, the rates of tolls levied and demanded. Failure to comply with the provi-

sions of this act shall work an immediate forfeiture of franchise. En. March 21, 1872. Am'd. 1900-01, 5.

§ 517. Toll gatherer may detain persons until they pay toll. Each toll gatherer may prevent from passing through his gate any person, animal, or vehicle, subject to toll, until the toll authorized to be collected for such passing has been paid. En. March 21, 1872. Am'd. 1905, 577.

The section as it now stands authorizes the toll gatherer to prevent from passing through his gate persons leading or driving animals or vehicles subject to toll. The form of the section has been changed to express what was doubtless originally intended by the legislature.—Code Commissioner's Note.

§ 518. Toll gatherer not to detain any person unnecessarily. Every toll gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger or any vehicle or animal liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved. En. March 21, 1872. Am'd. 1905, 578.

The change consists in the insertion of the words "or any vehicle or animal" after "passenger."—Code Commissioner's Note.

§ 519. Persons avoiding tolls to pay five dollars. Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of a wagon, turnpike, or plank road, or passes any gate thereon or ground adjacent thereto, and again enters upon such road for, each offense forfeits the sum of five dollars to the corporation injured. En. March 21, 1872.

§ 520. Penalties for trespasses on property of corporation. Every person who:

1. Willfully breaks, cuts down, defaces, or injures any milestone or post on any wagon, turnpike, or plank road; or,

2. Willfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road, or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act. En. March 21, 1872.

§ 521. Revenue, how appropriated. Tolls to be reduced, etc. The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair. En. March 21, 1872. Am'd. 1873-4, 215.

§ 522. May mortgage and hypothecate corporate property. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair its road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two-thirds of the capital stock subscribed. En. March 21, 1872. Am'd. 1905, 578.

Cal. Rep. Cit. 80, 341.

§ 523. This title applies to natural persons as well as corporations. When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations. En. March 21, 1872.

Cal. Rep. Cit. 79, 168; 80, 341; 98, 313.

Toll roads: See Pol. Code, secs. 2779-2832.

§ 524. Franchises for construction of roads for horseless vehicles. The legislative or other body to whom is intrusted the government of any county, city and county, city, or town, may, under such regulations, restrictions, and limitations as it may provide, subject to existing laws, grant franchises for the construction of paths and roads, either on the surface, elevated, or depressed, on, over, across, or under the streets and public highways of any such county, city, or town, for the use of bicycles, tricycles, motorcycles, and other like horseless vehicles, for a term not exceeding fifty years. In incorporated cities no franchise must be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority

of the frontage upon the road or street along which said path or road is sought to be constructed, is first had and obtained, and filed with such legislative or governing body. En. Stats. 1905, 578.

The statute of 1897, page 191, authorizing municipal corporations to construct paths and roads for the use of bicycles and other horseless vehicles, is codified in this section.—Code Commissioner's Note.

TITLE VI.

BRIDGE, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS.

§ 528. Corporation to obtain license from supervisors.
§ 529. Corporate existence ceases, when.
§ 530. Annual report to supervisors.
§ 531. This title to apply to natural persons alike with corporations.

§ 528. Corporation to obtain license from supervisors. No corporation must construct, or take tolls on a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the supervisors, or other governing body having authority in that behalf. En. March 21, 1872. Am'd. 1905, 579.

The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisor."—Code Commissioner's Note.

Cal. Rep. Cit. 136, 49.

Public ferries and toll bridges: See Pol. Code, secs. 2843 et seq.

§ 529. Corporate existence ceases, when. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors, or other governing body having authority in that behalf; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to

establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law. En. March 21, 1872. Am'd. 1905, 579.

The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."—Code Commissioner's Note.

§ 530. Annual report to supervisors. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for its bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of its capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls, and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation, as the board of supervisors or other governing body having authority in that behalf may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make such report subjects the corporation to a penalty of two hundred dollars, and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county from which the authority of the corporation was derived. All such cases must be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor. En. March 21, 1872. Am'd. 1905, 579.

The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."—Code Commissioner's Note.

§ 531. This title to apply to natural persons alike with corporations. When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this title is applicable to such persons in like manner as it is applicable to corporations. En. March 21, 1872.

Cal. Rep. Cit. 98, 314.

General provisions: Public ferries and toll bridges, Pol. Code, secs. 2843-2895; wharves, chutes, and piers, Pol. Code, secs. 2906-2921.

TITLE VII.

Old title repealed and new title added March 20, 1905. Stats. 1905, 492.

TELEGRAPH AND TELEPHONE CORPORATIONS.

§ 536. May use right of way along waters, roads, and highways.
§ 537. Liability for damaging telegraph or telephone property.
§ 538. Penalty for willfully or maliciously injuring telegraph or telephone property.
§ 539. Conditions on which damage to subaqueous cable may be recovered.
§ 540. May dispose of certain rights.
§ 541. Rates of charges to be fixed and how published. (Repealed.)

§ 536. May use right of way along waters, roads, and highways. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

The change consists in the insertion of the words "or telephone" after the word "telegraph," thus including telephone companies within the operation of the above sections.—Code Commissioner's Note.

§ 537. Liability for damaging telegraph or telephone property. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor, or otherwise, breaks, in-

jures, or destroys the subaqueous cable of a telegraph or telephone corporation, subjects its owner to the damages hereinbefore specified. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 538. Penalty for willfully or maliciously injuring telegraph or telephone property. Any person who willfully and maliciously does any injury to any telegraph or telephone property, mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, note.

§ 539. Conditions on which damage to subaqueous cable may be recovered. No telegraph or telephone corporation can recover damages for the breaking or injuring of any subaqueous telegraph or telephone cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 540. May dispose of certain rights. Any telegraph or telephone corporation may at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 541. Rates of charges to be fixed, and how published. (Repealed.) En. March 21, 1872. Rep. 1873-4, 216.

TITLE VIII.

WATER AND CANAL CORPORATIONS.

§ 548. Corporation may obtain contract to supply city or town.
§ 549. Water corporations, duties, etc.
§ 550. Right to use streets, ways, alleys, and roads.
§ 551. Construction of canal, etc.
§ 552. Right of purchaser to use water for irrigating.

§ 548. Corporation may obtain contract to supply city or town. No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years. **En. March 21, 1872.**

Water rights: See secs. 1410 et seq.

§ 549. Water corporations, duties, etc. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state. En. March 21, 1872. Am'd. 1873-4, 21; 1905, 580.

The change consists in the omission of the two sentences following the word "charge," which are now a part of the section, said sentences having been superseded by the provisions of the Constitution of 1879, providing for the mode in which water rates shall be fixed.—Code Commissioner's Note.

Cal. Rep. Cit. 52, 134; 52, 141.

§ 550. Right to use streets, ways, alleys, and roads. En. March 21, 1872. Rep. 1905, 580.

This section is an expression of the constitutional provisions found in the Constitution of 1849, respecting the right of corporations to use streets for laying water pipes.—Code Commissioner's Note.

§ 551. Construction of canal, etc. No canal, flume, or other appliance for the conducting of water must be so laid, constructed, or maintained as to obstruct any public highway; and every person or corporation owning, maintaining, operating or using any such canal, flume, or appliance, crossing or running along any public highway, must construct, maintain, and keep in repair such bridges across the same as may be necessary to the safe and convenient use of such highway by the public; and on failure so to do, the board of supervisors of the county, after seven days' notice in writing to said person or corporation, may construct or repair such bridge or bridges, and recover of such person or corporation the amount of the expenditure made in so doing. En. March 21, 1872. Am'd. 1905, 580.

The design of the amendment is to better express the purpose of the present section and to remove the objections that it may be unconstitutional in investing the supervisors with an arbitrary power to require or not require bridges, and to supply the present defect in not providing any means of coercing the performance of the duty created.—Code Commissioner's Note.

Cal. Rep. Cit. 68, 359; 98, 183.

See the earlier acts upon canal and ditch corporations: Act May 14, 1862, Stats. 1862, 541; and the subsequent act, April 2, 1870, Stats. 1870, 660. See, also, Statutes in force, title, Water Commissioners.

Act of March 30, 1872, relative to formation of canal and ditch corporations, Stats., 1871-2, p. 733.

§ 552. Right of purchaser to use water for irrigating. Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land, on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation. En. Stats. 1875-6, 77.

Cal. Rep. Cit. 56, 440; 56, 441; 90, 286; 112, 434; 112, 435; 129, 448; 130, 313.

Act regulating sale, rental, and distribution of appropriated water: See post, Appendix, title Water Companies.

Irrigation, statutes relating to: See General Laws, title Irrigation.

TITLE IX.

HOMESTEAD CORPORATIONS.

§ 557. Time of corporate existence.
§ 558. By-laws must specify time for and amount of payment of installments, and penalty for failure to pay. By-laws to be furnished to any member on demand.
§ 559. Advertisement and sale of delinquent and forfeited shares.
§ 560. May borrow and loan funds—How, and for what time.
§ 561. Minor children, wards, and married women may own stock.
§ 562. Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.
§ 563. When corporation is terminated, and how.
§ 564. Payment of premiums.
§ 565. Annual report to be published.
§ 566. Publication in certain cases.

§ 557. Time of corporate existence. Corporations organized for the purpose of acquiring lands in large tracts, paying off encumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years. En. March 21, 1872.

Time of corporate existence: See post, Appendix, title Homesteads.

§ 558. By-laws must specify time for and amount of payment of installments, and penalty for failure to pay. By-laws to be furnished to any member on demand. Such corporations must specify in their by-laws the times when the installments of the captal stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand. En. March 21, 1872.

§ 559. Advertisement and sale of delinquent and forfeited shares. Whenever any shares of stock are declared forfeited, by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such cor-

poration is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber. En. March 21, 1872.

§ 560. May borrow and loan funds—How, and for what time. Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one-fourth of the aggregate amount of the shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence. En. March 21, 1872.

§ 561. Minor children, wards, and married women may own stock. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands. En. March 21, 1872.

§ 562 Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars. Homestead corporations must not purchase and sell, or otherwise acquire

and dispose of real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars. For any violation of the provisions of this section corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings. En. March 21, 1872.

§ 563. When corporation is terminated, and how. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part. No dividend of funds must be made on termination of its corporate existence, until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or, upon the application of a majority in interest of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conductive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders. En. March 21, 1872.

§ 564. Payment of premiums. Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent installments and premiums. En. March 21, 1872.

§ 565. Annual report to be published. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in the [a] newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities. En. March 21, 1872.

§ 566. Publication in certain cases. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county. En. March 21, 1872.

See act of March 23, 1874, relative to homestead corporations, Appendix, title Homesteads.

TITLE X.

SAVINGS AND LOAN CORPORATIONS.

§ 571. May loan money—On what terms, how, and to whom, and how long.
§ 572. Capital stock, and rights and privileges thereof.
§ 573. No dividends, except from surplus profits. To contract no liability, except for deposits.
§ 574. Property which may be owned by corporations. Restrictions in purchases as provided above.
§ 575. Married women and minors may own stock in their own right.
§ 576. May issue transferable certificates of deposit. Special certificates.
§ 577. To provide reserve fund for the payment of losses.
§ 578. Prohibition on director and officer, and what vacates office.
§ 579. Definition of phrase "create debts."
§ 580. Banks, amount of capital stock required.
§ 581. Restrictions on savings banks.
§ 582. True names of persons engaged in banking must be shown.
§ 583. Dividends—Surplus fund.
§ 583a. Capital actually paid up must be published.
§ 583b. Report of unclaimed deposits. Publication of same.

§ 571. May loan money—On what terms, how, and to whom, and how long. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors, may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and may repay depositors with or without interest. No such corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than ten years. En. March 21, 1872. Am'd. 1900-01, 295.

Cal. Rep. Cit. 64, 123; 97, 222; 126, 415; 136, 442.

Banks cannot be created except under general laws: Const. Cal., art. XII, sec. 5.

Act relating to banking corporations repealed: See post, Appendix, title Banks and Banking.

Act compelling bank to publish statement of unclaimed deposits: See post, Appendix, title Banks and Banking.

Act providing for dissolution and winding up of savings banks and trust companies: See post, Appendix, title Banks and Banking.

§ 572. Capital stock, and rights and privileges thereof. When savings and loan corporations have a capital stock specified in their articles of incorporation, certificates of the ownership of shares may be issued; and the rights

and privileges to be accorded to, and the obligations to be imposed upon, such capital stock, as distinct from those of depositors, must be fixed and defined, either in the articles of incorporation or in the by-laws. En. March 21, 1872.

Cal. Rep. Cit. 64, 123; 109, 401; 117, 160.

Increase of capital stock: See post, Appendix, title Banks and Banking.

§ 573. No dividends, except from surplus profits. To contract no liability, except for deposits. The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors. The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders. En. March 21, 1872.

Cal. Rep. Cit. 64, 123; 109, 401; 117, 160; 119, 343.

Act prohibiting dividing or withdrawing of capital stock: See post, Appendix, title Banks and Banking.

§ 574. Property which may be owned by corporations. Restrictions in purchases as provided above. Savings and loan corporations may purchase, hold and convey real and personal property, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two-thirds of the stockholders the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. Such as may have been mortgaged, pledged or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. Such as may have been purchased at sales under pledges, mortgages or deeds of trust made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. No such corporation must purchase, hold or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section must be sold by the corporation within ten years after the title thereto is vested in it by purchase or otherwise;

5. No such corporation must purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold and silver bullion and United States mint certificates of ascertained value and evidences of debt issued by the United States;

6. No such corporation must purchase, hold or convey bonds, securities or evidences of indebtedness, public or private, except bonds of the United States, of the state of California, and of the counties, cities, or cities and counties, or towns, or school districts of the state of California, or bonds of railroad or street railroad corporations owning property and having their principal place of business in the state of California, unless such corporation has a capital stock or reserve fund paid in of not less than one hundred thousand dollars. En. March 21, 1872. Am'd. 1873-4, 273; 1900-01, 659.

Cal. Rep. Cit. 64, 123; 109, 401; 117, 160; 126, 416; 133, 613. Subd. 6—136, 442.

§ 575. Married women and minors may own stock in their own right. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor. En. March 21, 1872.

Cal. Rep. Cit. 64, 123; 117, 160; 19, 343; 134, 405.

§ 576. May issue transferable certificates of deposit. Special certificates. Savings and loan corporations may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the corporation; payment thereafter made by the corporation to the depositor named in such certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative of such person, of the sum for which such special certificate was

issued, discharges the corporation from all further liability on account of the money so paid. En. March 21, 1872.

Cal. Rep. Cit. 64, 123; 109, 403; 117, 160; 119, 341; 136, 512.

§ 577. To provide reserve fund for the payment of losses. Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased. The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used toward paying any losses which the corporation may sustain in pursuing its lawful business. The corporation may provide by its by-laws for the disposal of any excess in the reserve fund over one hundred thousand dollars, and the final disposal, upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses. En. March 21, 1872.

Cal. Rep. Cit. 57, 602; 64, 123; 109, 401; 117, 160.

§ 578. Prohibition on director and officer, and what vacates office. No director or officer of any savings and loan corporation must, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be an obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant. En. March 21, 1872.

Cal. Rep. Cit. 64, 123; 104, 476; 104, 480; 117, 160; 124, 291; 130, 257; 136, 442.

Overdrawing of his account by officer, a misdemeanor: Pen. Code, sec. 561.

§ 579. Definition of phrase "create debts." Receiving deposits, issuing certificates of deposit, checks and bills of exchange, and the like, in the transaction of the busi-

ness of savings and loan corporations, must not be construed to be the creation of debts within the meaning of the phrase "create debts," in section 309. En. March 21, 1872.

Cal. Rep. Cit. 57, 602; 64, 123; 117, 160.

See act of February 21, 1872, relative to corporations for the accumulation and investment of funds and savings, Appendix, title Banks and Banking.

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§ 580. Banks, amount of capital stock required. No §580 Repl'd. p. 415 savings bank, or bank, or banking corporation, shall be incorporated in this state and conduct such banking business in a city or town of five thousand inhabitants or under with a capital stock of less than twenty-five thousand dollars, or in a city or town of over five thousand and not exceeding ten thousand inhabitants with a capital stock of less than fifty thousand dollars, or in a city or town of over ten thousand and not exceeding twenty-five thousand inhabitants with a capital stock of less than one hundred thousand dollars, or in a city or town of over twenty-five thousand inhabitants with a capital stock of less than two hundred thousand dollars. Before the secretary of state issues to any corporation that proposes to do a banking business his certificate of the filing of the articles of incorporation, there must be filed in his office the affidavit of the persons named in said articles as the first directors of the corporation, that all the capital stock has been actually and in good faith subscribed, and at least fifty per centum thereof paid, in lawful money of the United States, to a person in such affidavit named, for the benefit of the corporation. The remainder of the capital stock required by law must be paid in within two years after said banking corporation receives its certificate of incorporation, and if not so paid said banking corporation shall not be authorized to do business; provided, however, that the provisions of this section shall not apply to corporations now in existence. En. Stats. 1903, 87. Am'd. 1905, 507.

§ 581. Restrictions on savings banks. No savings bank shall lend to exceed sixty per cent of the market value of any piece of real estate to be taken as security, except for the purpose of facilitating the sale of property owned by the corporation. And it shall be unlawful for any savings and loan society, or savings bank, to purchase, invest, or loan its capital, or the money of its depositors, or any part of either, in mining shares or stocks. Any president or managing officer who knowingly consents to

a violation of the above provision shall be deemed guilty of a felony. En. Stats. 1903, 352.

§ 582. **True names of persons engaged in banking must be shown.** Every person or number of persons not being incorporated, engaged in the business of banking, or publicly receiving money on deposit must conduct such business under a name which shows the true names of all persons engaged therein, unless such person or persons have complied with the provisions of article VII of chapter II of title X of part IV of division third of said Civil Code. Every person violating any of the provisions of this section is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not less than ninety days nor more than six months, or by fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. En. Stats. 1903, 352.

§ 583. **Dividends—Surplus funds.** The directors of any savings bank, bank, or banking corporation having a capital stock, may semi-annually declare a dividend of so much of the net profits of the stockholders as they shall judge expedient; but every such corporation shall, before the declaration of such dividend, carry at least one-tenth (1-10) part of the net profits of the stockholders for the preceding half year to its surplus or reserve fund until the same shall amount to twenty-five per centum of its paid-up capital stock. But the whole or any part of such surplus or reserve fund, if held as the exclusive property of stockholders, may at any time be converted into paid-up capital stock, in which event such surplus or reserve fund shall be restored in manner as above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. A larger surplus or reserve fund may be created, and nothing herein contained shall be construed as prohibitory thereof. En. Stats. 1903, 353.
Cal. Rep. Cit. 134, 605.

§ 583a. **Capital actually paid up must be published.** No banker, nor officer of any bank or corporation doing a banking business, shall advertise in any manner, or publish any statement of the capital stock authorized or subscribed, unless he advertise and publish in connection therewith, the amount of capital actually paid up. Any officer, or the officers of any bank or corporation doing a banking business, advertising in any manner, or publishing, a statement of the capital stock of such bank or

banking corporation, authorized or subscribed, without the statement in connection therewith of the stock actually paid up, shall be guilty of a misdemeanor. En. Stats. 1903, 353.

§ 583b. Report of unclaimed deposits; publication of same. The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the board of bank commissioners a sworn statement showing the amount placed to his credit, the last known place of residence or postoffice address, and the fact of death, if known to such president, of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or city and county where such bank, society, or other institution is situated or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, or which, with the accumulation thereon, is less than fifty dollars. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president of any of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor.

Sec. 2. The act entitled "An act to compel savings banks to publish a sworn statement of all unclaimed deposits," approved March 23, 1893, is hereby repealed.

Sec. 3. The act entitled "An act to compel all depositaries of money and commercial banks to publish a sworn statement of all unclaimed deposits," approved February 25, 1897, is hereby repealed. En. Stats. 1905, 581.

This section is a codification of the statutes of 1893, page 183, and 1897, page 27, the only change made being in the provisions concerning the person who is to make the report. The original statute provided that the report should be made by the president or secretary. It has been thought best to impose the duty upon a single officer, so that it cannot be evaded by one officer, by his saying that it was the duty of the other, or that he had supposed the other had, or would, perform it.—Code Commissioner's Note.

TITLE XI.

Old title repealed and new title substituted March 21, 1905. Stats. 1905, 584.

MINING CORPORATIONS.

§ 585. Repealed.
§ 586. Transfer agencies.
§ 587. Stock issued at transfer agencies.
§ 587a. Consolidation of mining corporations.
§ 588. Books and balance sheets to be kept by secretary. Stockholders' right to inspect.
§ 589. Right of stockholders to visit mine with expert.
§ 590. Liability of presidents and directors.

§ 585. En. March 21, 1872. Rep. 1905, 584.

§ 586. Transfer agencies. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation. En. March 21, 1872. Rep. 1905, 584. En. 1905, 584.

Revises the whole of Title XI of Part IV of Division First of the Civil Code, respecting mining corporations. Sections 586 and 587 are not changed, but simply re-enacted. Section 587a contains substantially the matter now in section 361, the word "corporations" being substituted for "companies," and the words "and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting" being inserted The matter added is designed to provide the mode in which notices may be served on stockholders.—Code Commissioner's Note.

Cal. Rep. Cit. 142, 392.

Act for protection of miners: See post, Appendix, title Mines and Mining.

Act relating to removal of officers: See post, Appendix, title Mines and Mining.

§ 587. Stock issued at transfer agencies. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent

having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation. En. March, 21, 1872. Rep. 1905, 585. En. 1905, 585.

See note to § 58, note.

§ 587a. Consolidation of mining corporations. It is lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the written consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation can, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there is one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporation is. And when the consolidation is completed, a certificate thereof, containing the manner and terms of such consolidation, must be filed in the office of the county clerk of the county in which the original certificate of incorporation of each of said corporations is filed, and a copy thereof must be filed in the office of the secretary of state; such certificate must be signed by a majority of each board of trustees or directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of trustees or directors for the consolidated corporation, for the year thence next ensuing; and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting. The said certificate must also contain all the requirements prescribed by section two hundred and ninety. En. Stats. 1905, 585.

Cal. Rep. Cit. 147, 666.

See note to § 586, ante.

§ 588. Books and balance sheets to be kept by secretary; stockholders' right to inspect. It is the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, whether such corporation be formed and organized under the laws of the State of California or of any other state, territory, or foreign country, to keep at some place within the State of California an office and in such office to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert, and to make copies or extracts from any such books or papers. He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examination as he may deem necessary. It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and compete statement of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet must be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company. It is the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each. He must attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bear-

ing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders. En. Stats. 1905, 585.

The statute of 1873-4, page 866, as amended in 1880, page 134, and 1897, page 38, is codified in the above sections, the only substantial change made being in the omission of the proviso in section 1 of the amendatory act of 1897, limiting its provisions to corporations "whose stock is listed and offered for sale at public exchange." The provisions of the part of the section omitted are unconstitutional. (See Johnston v. Tautphaus, 127 Cal. 604.)—Code Commissioner's Note.

§ 589. Right of stockholders to visit mine with expert. Any stockholder of a corporation formed under the laws of this state for the purpose of mining, is entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit; and when such stockholder applies to the president of such corporation, he must immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine. It is the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein, and to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. If the superintendent fails to obey such order, such stockholder is entitled to recover, in any court of competent jurisdiction, against the corporation, the sum of one thousand dollars, and traveling expenses to and from the mine, as liquidated damages, together with costs of suit. In case of such refusal, it is the duty of the directors of the corporation forthwith to remove the officer so refusing, and thereafter he must not be employed directly or indirectly by the corporation, nor must any salary be paid to him. En. Stats. 1905, 586.

See note to § 588, ante.

§ 590. Liability of presidents and directors. In case of the refusal or neglect of the president to cause to be is-

sued by the secretary the order mentioned in section five hundred and eighty-nine, such stockholder is entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section. If the directors fail to have the reports and accounts current made and posted as provided in section five hundred and eighty-eight, they are liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, he may recover judgment for actual damages sustained by him, with costs of suit. Each of such defaulting directors is also liable to removal for such neglect. En. Stats. 1905, 587.

See note to § 588, ante.

TITLE XI*a*.

New title added March 21, 1905. Stats. 1905, 588.

CORPORATIONS FOR THE FORMATION OF CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES, AND OTHER KINDRED ASSOCIATIONS.

§ 591. Formation, organization and powers of.
§ 592. Capital stock and certificates of.
§ 592a. Powers which may be conferred on the trustees, directors, or executive committee.
§ 592b. Power to acquire, sell, possess, and use property.
§ 592c. The by-laws.
§ 592d. Power to levy and collect assessments.
§ 592e. Pre-existing corporations may become entitled to the benefit of this title.

§ 591. Formation, organization, and powers of. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanics' institutes, and other associations formed for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts, may be formed by twenty or more persons, who must execute and file articles of incorporation as prescribed in chapter one of title one of part four of this code. Upon receiving from the secretary of state a certificate of the filing with him of a certified copy of its articles of incorporation, such corporation becomes a body corporate, and by its corporate name has succession for the period limited in its articles, and power: (1) To sue and be sued in any court; (2) to make and use a common seal, and alter it at pleasure; (3) to lease, purchase, hold, sell, mortgage, convey in trust, convey, release from trust or mortgage, such real and personal property as hereinafter provided; (4) to elect and appoint such officers, agents, and servants as

the business of the corporation may require; and (5) to make by-laws, not inconsistent with the laws of this state, providing for the organization of the corporation and the management of its affairs. No corporation formed under this title must engage in any mercantile, commercial, or mechanical business. En. Stats. 1905, 588.

Adds a new title to the Code, designated "Corporations for the Formation of Chambers of Commerce, Boards of Trade, Mechanics' Institutes, and other Kindred Organizations," the matter contained in said chapter being a codification of the statute of 1865-6, page 469, as amended in 1867-8, page 5, and 1885, page 76, respecting chambers of commerce.—Code Commissioner's Note.

§ 592. Capital stock and certificates of. Every corporation formed under this title may have a capital stock and issue certificates to represent the shares thereof, if the articles of incorporation contain a statement of the amount of its capital stock and the number of shares into which it is divided. The rights and privileges to be accorded to stockholders are distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation must be fixed and established in the by-laws of the corporation. En. Stats. 1905, 588.

See note to § 591, ante.

§ 592a. Powers which may be conferred on the trustees, directors, or the executive committee. The corporation may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any of the corporate powers, if the articles of incorporation state that the right to exercise the corporate powers is to be confided to such board of trustees or directors or to such executive committee, and the number of trustees, directors, or committee, and the names of those selected to take charge of the affairs of the corporation for the first six months. En. Stats. 1905, 588.

See note to § 591, ante.

§ 592b. Power to acquire, sell, possess, and use property. Every corporation formed under this title may lease, purchase, have, hold, use, take possession of, and enjoy in fee simple or otherwise any personal or real property within the state necessary for the uses and purposes of the corporation, and may sell, lease, deed in trust, alien, or dispose of the same at its pleasure. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592c. The by-laws. The by-laws of any corporation formed under this title without capital stock must prescribe how members of the corporation shall be admitted and how expelled, and how officers, agents, and servants shall be appointed. Such provisions in the by-laws have force and effect as between private parties and the corporation. All corporations formed under the provisions of this title must determine, by their by-laws, the manner of calling and conducting their meetings, the number of members that constitute a quorum, the manner of levying and collecting assessments, the officers of the corporation, the manner of their election or appointment and their tenure of office, and may prescribe suitable penalties for the violation of such by-laws, not exceeding in any case one hundred dollars for any one offense. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592d. Power to levy and collect assessments. Every corporation formed under the provisions of this title has power to levy and collect, from the members thereof, for the purpose of paying the proper and legal expenses of the corporation, assessments in such manner as may be prescribed by its by-laws, but not otherwise. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592e. Pre-existing corporations may become entitled to the benefit of this title. Every corporation, association, or institution formed prior to the enactment of this title, for any of the purposes contemplated thereby, may, by a vote of the majority of its members voting at a meeting called for that purpose, become entitled to the benefit thereof on filing the certificate hereinafter required. Notice of such meeting and of its object must be published in a newspaper of general circulation in the county in which the principal place of business of the corporation, association, or institution is located, for at least two weeks before the day on which the meeting is to be held. Such certificate must be signed and acknowledged by at least five members of the corporation, association, or institution, must contain a list of the members who desire to become members, and must be filed with the county clerk of such county, and a copy thereof, certified by him, must be filed with the secretary of state. Thereupon such corporation, association, or institution possesses all the powers and privileges conferred by this title. En. Stats. 1905, 589.

See note to § 591, ante.

TITLE XII.

RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS.

§ 593. Number of directors.
§ 594. Additional facts, articles of incorporation to set out.
§ 595. Amount of real estate limited.
§ 596. How much land friendly, etc., societies may hold.
§ 597. Directors to make verified report annually.
§ 598. Sale and mortgage of real estate.
§ 599. What may be provided for in their by-laws.
§ 600. Members admitted after incorporation.
§ 601. No member to transfer membership, etc.
§ 602. Religious societies may become sole corporations.
§ 603. Churches, how incorporated.
§ 604. Same.
§ 605. Consolidation of debts.

§593 Am'd. p. 415

§ 593. Number of directors. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than three nor more than twenty-one, and may incorporate themselves as provided in this part. En. March 21, 1872. Am'd. 1880, 6; 1905, 113.

Cal. Rep. Cit. 114, 300; 114, 301; 121, 321; 128, 260; 128, 262.

Act relating to mutual benefit and relief associations: See post, Appendix, title Benefit Societies.

Benevolent associations not insurance companies: Ante, sec. 451.

§ 594. Additional facts, articles of incorporation to set out. In addition to the requirements of section 290, the articles of incorporation of any association mentioned in the preceding section must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election. En. March 21, 1872.

Cal. Rep. Cit. 52, 333; 128, 260; 128, 261; 128, 262.

§ 595. Amount of real estate limited. All such corporations may hold all the property of the association owned prior to incorporation, or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than

may be necessary for the business and objects of the association, and providing burial grounds for its deceased members, not to exceed six (6) whole lots in any city or town, nor more than fifty (50) acres in the country, the annual increase, income or profit, whereof must not exceed fifty thousand ($50,000) dollars; provided, that any such corporation now or hereafter having, and having had continuously, for the next preceding three (3) years, the care, custody, control, and maintenance each year, upon an annual average of not less than one hundred (100) orphans, half orphans and indigent minor children, at any one orphan asylum, shall be entitled and allowed to own and possess any number of acres not exceeding one hundred and sixty (160) acres of land in the country, outside of any incorporated city or town, and the annual income or profit of which does not exceed fifty thousand ($50,000) dollars; and provided further, that the limitations herein provided for shall not apply to corporations formed, or to be formed, under section six hundred and two (602) of the Civil Code, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes or to corporations organized for social purposes and purposes of recreation and not for profit; and provided further, that the limitations herein provided for shall not apply to corporations organized other than for profit, when the land is timber land, and not exceeding one hundred and sixty (160) acres in extent, and is held or used for the purposes of the organizations, in which case said land shall be subject to all laws regulating the preservation of forests. En. March 21, 1872. Am'd. 1881, 9; 1899, 10; 1903, 136; 1905, 18.

Cal. Rep. Cit. 114, 300; 114, 301; 119, 483.

§ 596. How much land friendly, etc., societies may hold. In addition to that provided for in the preceding section, friendly societies and pioneer associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the superior court, as hereinafter provided. En. March 21, 1872. Am'd. 1877-8, 84; 1880, 6.

§ 597. Directors to make verified report annually. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof, to the members of the association for which they are acting. En. March 21, 1872.

§ 598. Sale and mortgage of real estate. Corporations of the character mentioned in section 593 may mortgage or sell the real property held by them, and may secure the payment of indebtedness by deed of trust or mortgage upon their real property, upon obtaining an order for that purpose from the superior court held in the county in which the property is situated. The corporations above mentioned may also issue bonds, payable at any time within twenty years, as evidence of the indebtedness secured by mortgage or deed of trust. Before making the order, proof must be made to the satisfaction of the court, that notice of the application for leave to sell or mortgage or execute a deed of trust has been given by publication in such manner and for such time as the court or the judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. But nothing herein contained shall prohibit or prevent the trustees or directors of such corporation, under such rules and regulations as they may adopt, from disposing of burial plots situated in grounds of such corporation dedicated for burial purposes, without making such application to or obtaining an order from court. En. March 21, 1872. Am'd. 1873-4, 216; 1880, 6; 1889, 230; 1891, 179.

§ 599. What may be provided for in their by-laws. Corporations now organized or that may hereafter be organized for purposes other than profit, may, either in their by-laws, ordinances, constitutions, or articles of incorporation, provide for:

1. The qualification of members, mode of election or appointment, and terms of admission to membership;

2. The fees of admission and dues to be paid to their treasury by member;

3. The number of persons that shall constitute a quorum at any meeting of the corporation, and that an election of

officers of the corporation by a meeting so constituted or the appointment or selection of such officers, or any of them, in any manner required by the rules, regulations, or discipline of any specified religious denomination, society, or church shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted;

4. The expulsion and suspension of members for misconduct or nonpayment of dues, also for restoration to membership;

5. A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section five hundred and ninety-three of this code;

6. Contracting, securing, paying, and limiting the amount of their indebtedness;

7. That the rules, regulations, or discipline for the time being, of any specified religious denomination, society, or church, shall always be a part of their by-laws, ordinances, constitutions, or articles of incorporation;

8. Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation. En. March 21, 1872. Am'd. 1885, 136; 1897, 246.

Cal. Rep. Cit. 142, 495. Subd. 4—90, 243.

§ 600. Members admitted after incorporation. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto. En. March 21, 1872.

§ 601. No member to transfer membership, etc. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided. En. March 21, 1872.

§ 602. Religious societies may become sole corporations. Whenever the rules, regulations, or discipline of any religious denomination, society, or church so require, for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall

be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society or church, to become a sole corporation, in the manner prescribed in this title, as nearly as may be, and with all the powers and duties, and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations and provisions in said title prescribed. Every corporation sole shall, however, for the purposes of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend, in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money, and give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, and without the order of any court; to receive bequests and devises for its own use and upon trusts to the same extent as natural persons may; and to appoint attorneys in fact. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record with the clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission, or certificate or letters of election or appointment, duly attested; provided, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society, or church. The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any judge of the superior court in the county in which any corporation is formed under this chapter shall at all times have access to the books of such incorporation. Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corpor-

ate seal and the hand of its incumbent, or amended articles of incorporation, in the form required by this title, and as prescribed by section two hundred and eighty-seven of this code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions in this title expressed. En. Stats. 1877-8, 84 Am'd. 1880, 6; 1897, 101.

Cal. Rep. Cit. 94, 161.

02a See acts of March 28, 1874, relative to mutual beneficial act.id relief associations, Appendix, title Benefit Societies; and January 8, 1872, relative to incorporation of colleges by benevolent and religious societies, Stats. 1871-2, p. 10.

§ 603. Churches, how incorporated. Whenever the regulations, rules, or discipline of any church or religious society require, for the administration of the temporalities thereof, or for the management of the property or estate thereof, any diocese, synod, or district organization of such church or religious society may elect directors and become an incorporation in the manner prescribed in this title, and with all the powers and duties, and for the uses and purposes in this title provided for benevolent or religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed, except as otherwise provided in this section; provided, that directors of such incorporation may be elected, and that the by-laws for its government may be made and amended by the convention, synod, or other representative body of such church or religious society, in and for such district, in accordance with the constitution, by-laws, discipline, or regulation thereof, at any regular meeting, or special meeting called for that purpose; and, provided, the certificate of incorporation and of the election of directors to be filed shall be sufficiently signed and attested by the signature of the presiding officer and secretary of the representative convention, synod, or other such body, in which such election is held; and, provided, all property held by such incorporation shall be in trust for the use, benefit, and purpose of the church or religious society by and for which such incorporation was formed, and in and of which such diocese, synod, or other district is an organized or constituent part; and that the limitation in section five hundred and ninety-five shall not apply to corporations formed

under this section, when the land is held or used for churches, hospitals, schools, colleges, asylums, parsonages, or cemetery purposes. En. Stats. 1885, 109.

Cal. Rep. Cit. 114, 300; 114, 301; 128, 262.

§ 604. Same. Any church or other religious association in this state, composed of two or more constituent parishes, missions, congregations, or societies, having a common convention, synod, council, or other representative legislative body, may be incorporated by such representative body under this part and subject to the provisions of this title, except as otherwise provided in this section. The representative body of such religious association electing to incorporate the same shall determine the name of the proposed corporation, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, and the number of its directors, and shall elect its directors for the first year. The articles of incorporation need only be signed and acknowledged by the presiding officer and secretary of such representative body, and in addition to the requirements of section two hundred and ninety, shall set forth the proceedings herein prescribed for said representative body, and that the same were duly had in accordance with the constitution, canon, rules or regulations governing the other proceedings of said representative body, and the time and place thereof. The directors of such corporation shall be elected annually by the representative body of the association. The representative body providing for such incorporation shall frame by-laws for the corporation, and such by-laws may be repealed or amended, or new by-laws may be adopted by any subsequent representative body in accordance with the constitution, canons, rules, or regulations governing the other proceedings of such representative body. Such corporation may hold and administer not only the common property, funds, and money of such association, but also the property, funds, and money of any constituent parish, mission, congregation, or society. The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, colleges, asylums, parsonages, or cemetery purposes.

§ 2. An act entitled "An act to amend an act entitled 'An act to establish a Civil Code,' approved March 21st,

1872, by adding a new section thereto, to be known as section 604, relating to the formation of religious incorporations for holding and administering church property," approved March 12th, 1885, being inconsistent herewith is hereby repealed. En. Stats. 1887, 104.

§ 605. Consolidation of debts. Any corporation, now or hereafter organized for purposes other than profit, may consolidate its debts, property, assets and franchises, with any other like association or corporation, either created under the laws of the state of California or under the laws of any other state or territory, in such manner as may be agreed upon by the respective boards of directors, or trustees, of such corporations; provided, however, that no such consolidation shall take place without the written consent of three-fifths (3-5) of the boards of directors, or trustees, of each of the corporations so consolidating, and such consolidation must not in any way relieve either of the corporations parties to it from any or all just debts or liabilities; provided, further, that in case of any such consolidation, due notice of the same must be given by advertisement published for one month in at least one newspaper published at the place of the principal business of each of the corporations so consolidating. When their consolidation is completed, a copy of the new articles of incorporation must be filed with the secretary of state, in the same manner as the original articles of incorporation are required to be filed. En. Stats. 1903, 251.

TITLE XII*a*.

New title added March 21, 1905. Stats. 1905, 590.

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS.

§ 607. Formation of corporations.
§ 607a. Power of to receive and dispose of property.
§ 607b. Complaints for violating any law relating to children or animals.
§ 607c. Magistrates and police officers to aid the corporation and its officers.
§ 607d. Pre-existing corporations.
§ 607e. Fines, penalties, and forfeitures, and the disposition to be made thereof.
§ 607f. Members and agents may be authorized to act as police officers.
§ 607g. Children who may be arrested and brought before a court or magistrate for examination.

§ 607. Formation of corporations. Corporations may be formed by any number of persons not less than five, a majority of whom must be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both. En. Stats. 1905, 590.

607, 607a, 607b, 607c, 607d, 607e, 607f, 607g. The subject matter of the above sections is taken from the statute of 1873-4, page 499, as amended in 1901, page 285, and 1903, page 69—to prevent cruelty to animals; the statute of 1875-6, page 830, relating to the incorporation of societies for the prevention of cruelty to children; the statute of 1877-8, page 812, for the protection of children; and the statute of 1877-8, page 813, relating to children. Section 1 of the act of 1875-6, page 830, is codified in section 607. Subdivision 7 of section 2 of the same act is codified in section 607a, and section 3 in section 607b. Section 607c is a codification of section 4 of the act of 1875-6, page 830, and section 4 of the act of 1873-4, page 499. Section 5 of the act of 1875-6, page 830, is codified in section 607d; and section 14 of that act, as amended in 1903, page 69, and section 5 of the act of 1877-8, page 813, are consolidated and codified in section 607e. Section 5 of the act of 1873-4, page 499, as amended in 1901, page 285, is codified in section 607f, and section 3 of the act of 1877-8, page 812, is codified in section 607g, with the exception of subdivision 5 thereof, which is an addition thereto, to cover the matters referred to in the act of 1877-8, page 813.—Code Commissioner's Note.

§ 607a. Power of to receive and dispose of property. Every such corporation may take and hold, by gift, pur-

chase, devise, or bequest, any property, real or personal, and dispose of the same at its pleasure; but it must not hold real property the annual income of which exceeds fifty thousand dollars. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607b. Complaints for violating any law relating to children or animals. Any such corporation, or any member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607c. Magistrates and police officers to aid the corporation and its officers. All magistrates, constables, sheriffs, and officers of police must, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be hereafter enacted relating to or affecting children or animals. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607d. Pre-existing corporations. The provisions of this title extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation which uses or specifies a name or style the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607e. Fines, penalties, and forfeitures, and the disposition to be made thereof. All fines, penalties, and forfeitures imposed and collected in any county, or city and county, of this state under the provisions of any law of this state, now or hereafter enacted, relating to or affecting children or animals, in every case where the prosecution was instituted, aided, or conducted by any such corporation or society now or hereafter existing, must, except

where otherwise provided, inure to such corporation or society in aid of the purposes for which it was incorporated or organized. In addition to said fines, penalties and forfeitures, every society incorporated and organized for the prevention of cruelty to animals may, in each city, or city and county, or county, where such society exists, while actively engaged in enforcing the provisions of the laws of this state, now or hereafter enacted, for the prevention of cruelty to animals, or arresting, or prosecuting offenders thereunder, or preventing cruelty to animals, be paid, as compensation therefor, from the county, or city and county general fund by the board of supervisors, a sum not exceeding one hundred and fifty dollars per month, in the same manner as other claims against said county, or city and county, are paid. En. Stats. 1905, 591.

See note to § 607, ante.

§ 607f. Members and agents may be authorized to act as police officers. All members and agents, and all officers of each or any of such corporations or societies, as may by the trustees thereof be duly authorized in writing, approved by a judge of the superior court of the county in which such corporation or society was organized, and sworn in the same manner as are constables or peace officers, have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any child or dumb animal, and may use such force as is necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any penal law relating to or affecting children or animals in the same manner as a constable or other peace officer; and may carry the same or similar weapons that such officers are authorized to carry. All such members and agents must, when making such arrests, exhibit and expose a suitable badge to be adopted by such corporation or society. All persons resisting such specially appointed officers, when performing any duty under this section, are guilty of a misdemeanor. En. Stats. 1905, 591.

See note to § 607, ante.

§ 607g. Children who may be arrested and brought before a court or magistrate for examination. Any child under the age of sixteen years that comes within any of the following descriptions named:

1. Who is found begging or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;

2. Who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

3. Who is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. Who frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance houses, concert saloons, theaters, or variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. Who is engaged or used for or in any business, exhibition, vocation, or purpose, in violation of any law of this state;

—Must be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it appears that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions; or when, upon the examination or conviction of any person having the custody of a child, of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had deems it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter; such court or magistrate, when it deems it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of any such child. En. Stats. 1905, 591.

See note to § 607, ante.

TITLE XIII.

CEMETERY CORPORATIONS.

§ 608. How much land may be held, and how disposed of.
§ 609. Who are members eligible to vote and hold office.
§ 610. May hold personal property, to what amount. How disposed of.
§ 611. May issue bonds to pay for grounds. Proceeds of sales, how disposed of.
§ 612. May take and hold property or use income thereof, how.
§ 613. When burial lot inalienable. Who may not be buried in lot.
§ 614. Lot owners previous to purchase to be members of the corporation.
§ 615. May sell lands, how.
§ 616. May hold property. Income, how applied.

§ 608. How much land may be held, and how disposed of. Corporations organized to establish and maintain cemeteries may take, by purchase, donation, or devise, land, not exceeding three hundred and twenty acres in extent, in the county wherein their articles of incorporation are filed, or in an adjoining county, and may employ any surplus moneys in the treasury thereof for such purpose; such lands to be held and occupied exclusively as a cemetery for the burial of the dead. The lands must be surveyed and subdivided into lots or plats, avenues, and walks, under order of the directors, and a map thereof filed in the office of the recorder of the county wherein the lands are situated. Thereafter, upon such terms and subject to such conditions and restrictions, to be inserted in the conveyances, as the by-laws or directors may prescribe, the directors may sell and convey the lots or plats to purchasers. En. March 21, 1872. Am'd. 1891, 179.

Cal. Rep. Cit. 140, 232.

Manner of execution of deeds by: See post, Appendix, title Corporations.

§ 609. Who are members eligible to vote and hold office. Every person of full age who is proprietor of a lot or plat in the cemetery of the corporation, containing not less than two hundred square feet of land, or, if there be more than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections

had by the corporation for directors or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation. En. March 21, 1872.

Cal. Rep. Cit. 140, 232.

§ 610. May hold personal property, to what amount. How disposed of. Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payments required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner. En. March 21, 1872.

Cal. Rep. Cit. 140, 232.

§ 611. May issue bonds to pay for grounds. Proceeds of sales, how disposed of. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery, and not otherwise; sixty per cent of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one-half, of the proceeds of all sales of lots or plats made from such lands; such payment to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, or assigns. En. March 21, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 140, 232.

§ 612. May take and hold property or use income thereof, how. Any corporation organized to establish and

maintain, or to improve, a cemetery, may take and hold title to any cemetery lot, plot or grave, devised or given to it in trust for the specific purpose of perpetually caring for the same. En. March 21, 1872. Am'd. 1900-1, 814.

Cal. Rep. Cit. 140, 232.

§ 613. When burial lot inalienable. Who may not be buried in lot. Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof, but no one not an owner acquires interest or right of burial therein by purchase; nor must anyone be buried in any such lot or plat not at the time owning an interest therein, or who is not a relative of such owner, or of his wife, except by consent of all jointly interested; provided, however, that when all the bodies buried in any such lot shall have been removed therefrom, with the consent of the owners of such lot, it shall be lawful for the then owners of such lot to sell and transfer the same by deed; and any such sale and transfer heretofore made is hereby declared to be valid and effectual to transfer the title to the purchaser, any law to the contrary thereof notwithstanding. En. March 21, 1872. Am'd. 1885, 1.

Cal. Rep. Cit. 115, 375; 140, 232.

§ 614. Lot owners previous to purchase to be members of the corporation. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, with all the privileges a purchase of a lot from the corporation confers. En. March 21, 1872.

§ 615. May sell lands, how. Cemetery corporations may sell lands held by them upon obtaining an order for that purpose from the superior court of the county where the lands are situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to sell has been given by publication in such manner and for such time as the court has directed, and that the lands are not required for and are not in use for burial purposes, and that it is for the interest of the corporation that such lands be sold. The ap-

plication must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. En. Stats. 1889, 61.

Cal. Rep. Cit. 140, 232.

§ 616. May hold property. Income, how applied. Any corporation organized to establish and maintain, or to improve, a cemetery, may take and hold any property bequeathed, granted, or given to it in trust, to apply the proceeds or income thereof to any and all of the following purposes: To the improvement or embellishment of such cemetery or of any lot therein; or to the erection, renewal, repair, or preservation of any monument, fence, or other structure in such cemetery; or to the planting or cultivation of trees, shrubs, or plants in or around such cemetery, or any lot therein; or to the improving, ornamenting, or embellishing of such cemetery, or any lot therein, in any other mode or manner not inconsistent with the purposes for which such cemetery was established or is being maintained. Such property and the proceeds or income thereof shall be invested and reinvested in bonds of the United States, or of this state, or of any municipality of this state or in first mortgages on real estate, or in centrally located income-producing improved real estate in any city, or city and county in this state, if such investment is not repugnant to the terms of the bequest, grant or gift. En. Stats. 1895, 162. Am'd. 1900-01, 814.

Cal. Rep. Cit. 138, 557; 140, 232.

TITLE XIV.

AGRICULTURAL FAIR CORPORATIONS.

§ 620. May acquire and hold real estate, how much.
§ 621. Shall not contract debts or liabilities exceeding amount in treasury.
§ 622. Not for profit. May fix fee, etc., for membership.

§ 620. May acquire and hold real estate, how much. Agricultural fair corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same, at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures,

stock raising, and general domestic industry. En. March 21, 1872.

§ 621. Shall not contract debts or liabilities exceeding amount in treasury. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section. En. March 21, 1872.

§ 622. Not for profit. May fix fee, etc., for membership. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership, which charges, together with the term of membership and mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs. En. March 21, 1872.

Cal. Rep. Cit. 93, 368.

TITLE XV.

Old title repealed and new title substituted March 21, 1905. Stats. 1905, 593.

CORPORATIONS TO FURNISH LIGHT FOR PUBLIC USE.

§ 628. Repealed.
§ 629. Duty to furnish gas or electricity.
§ 630. When corporations may refuse to supply gas.
§ 630a. When corporations may refuse to supply electric current for light.
§ 631. Right to enter buildings for inspection.
§ 632. Right to shut off supply of gas or electricity.

§ 628. Corporations to obtain privilege from city or town and use meters proved by the inspector. En. March 21, 1872. Rep. 1905, 592.

§ 629. Duty to furnish gas or electricity. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main, or direct or primary wire, of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas or electricity as required

for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas or electricity required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter. En. March 21, 1872. Rep. 1905, 593. En. 1905, 593.

629, 630, 630a, 631, 632. The purpose of the amendment is to make the above sections applicable to electric as well as to gas-light corporations. To accomplish this, the following changes have been made: In section 629 the words "or direct or primary wire" are inserted after "main" and the words "or electricity" are inserted in two places after "gas." Section 630a is a new section, to extend the provisions of the chapter "Electric Light Companies," and provide for advances similar to those made to gas companies by subscribers. In section 631 the words "any owner or manager of gas or electric works, or agent of such owner or manager, exhibiting written authority, signed by such owner or manager, or" are inserted at the beginning of the section; the words "or electric light" are inserted after "gas"; the words "or electricity" are inserted after "gas," and the words "or electric meters" are inserted after "meters." In section 632 the words "or electricity" are added after "gas" in three places, and the word "wires" is inserted after "pipes."—Code Commissioner's Note.

Cal. Rep. Cit. 109, 144; 132, 211; 141, 706; 141, 710; 141, 711; 141, 712.

§ 630. When corporations may refuse to supply gas. No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof. En. March 21, 1872. Rep. 1905, 593. En. 1905, 593.

See note to § 629, ante.

§ 630a. When corporations may refuse to supply electric current for light. No corporation is required to construct lines for the supply of electric current for light where serious obstacles exist, nor shall such corporation be required to supply such current from a direct wire at a distance too remote from the generating station, to insure a sufficient supply; nor is such corporation required to supply electric current for light from a primary wire carrying current of high voltage, unless the applicant deposit, in advance, a sum of money sufficient to pay the actual costs of such construction and for the appliances required to sup-

ply electric current with safety at the proper voltage. En. Stats. 1905, 593.

See note to § 629, ante.

§ 631. Right to enter buildings for inspection. Any owner, manager or superintendent of gas or electric light works, or agent of such owner, manager, or superintendent, exhibiting written authority, signed by such owner, manager or superintendent, or any agent of a gas or electric light corporation exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas or electricity supplied by such owner or corporation, to inspect the gas meters or electric meters therein to ascertain the quantity of gas or electricity supplied or consumed. Every owner or occupant of such building who hinders or prevents such entry or inspection must pay to the owner or corporation the sum of fifty dollars as liquidated damages. **En. March** 21, 1872. Rep. 1905, 593. En. Stats. 1905, 593.

See note to § 629, ante.

§ 632. Right to shut off supply of gas or electricity. All gas or electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, fittings or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity. **En. March** 21, 1872. Rep. 1905, 593. **En. 1905, 594.**

See note to § 629, ante.

Cal. Rep. Cit. **132, 212; 141, 706; 141, 708.**

TITLE XVI.

LAND AND BUILDING CORPORATIONS.

§ 633. Formation and organization. Articles of incorporation, what to set forth.
§ 634. Capital stock.
§ 635. Retiring free shares.
§ 636. Maturity of stock.
§ 637. Loans and installments.
§ 638. Rate of interest. Security.
§ 638a. Withdrawal of stock, notice of.
§ 639. Forfeiture—Arrears in payments.
§ 640. Purchase of real estate.
§ 641. Borrowing money.
§ 642. Profits and losses.
§ 643. Membership.
§ 644. Annual report.
§ 645. Foreign corporations, deposit by.
§ 646. Electing to continue business.
§ 647. Subject to provisions relating to bank commissioners.
§ 648. Definition of.
§ 648½. Taxation of.

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§ 633. Formation and organization. Articles of incorporation, what to set forth. Corporations may be formed subject to the provisions of this title, and with all the rights, duties, and powers herein specified. Such corporations shall be known as mutual building and loan associations, and the words "mutual building and loan association" shall form part of the name of every such corporation. The articles of incorporation, in setting forth the purposes for which the corporation is formed, shall state, that it is formed to encourage industry, frugality, home building, and savings among the stockholders; the accumulation of savings; the loaning to its stockholders of the funds so accumulated, with the profits and earnings; and the repayment to each stockholder of his savings and profits, when they have accumulated to a certain sum, or at any time when he shall desire the same, as provided in the by-laws, or when the corporation shall desire to repay the same; and shall also state that it is formed for all the purposes specified in this title. En. Stats. 1891, 252.

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Cal. Rep. Cit. 36, 525.

The sections by this act added to the Civil Code, providing for the examination by the bank commissioners of this state of all building and loan associations, apply to all such corporations, whether organized and doing business before or after the passage of this act: Acts of 1891, p. 252, sec. 1.

Act creating board of commissioners of building and loan associations: See post, Appendix, title Building and Loan Associations.

Annuity or endowment insurance. See post, Appendix, title Insurance.

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§ 634. Capital stock. The capital stock of such corporations shall be paid in by the stockholders in regular, equal, periodical payments, at such times and in such amounts as shall be provided in the by-laws. Such periodical payments shall be called dues. And at or before a time to be stated in the by-laws, each stockholder shall pay to the corporation, upon each share of stock held by him, such an amount of dues as the by-laws shall provide; and the payment of dues shall so continue on each share of stock issued till it reaches its matured value, or is withdrawn, canceled, or forfeited. The capital stock shall consist of such accumulated dues, together with the earnings and profits of the corporation, and shall in no case exceed two million dollars, except as to corporations now existing. It shall be divided into shares of matured or par value of one hundred dollars, or two hundred dollars each, as shall be provided in the articles of incorporation and fixed by the by-laws. Certificates of stock shall be issued to each stockholder on the first payment of dues by him. The shares shall be issued in yearly, half-yearly, or quarterly series, except in corporations now existing, in such amounts in each series, and at such times, as shall be determined by the board of directors. No share of a prior series shall be issued after the issuing of shares in a new series. Shares which have not been pledged as a security for the repayments of a loan shall be called free shares. Shares that have been so pledged shall be called pledged shares. All stock matured and surrendered or canceled in any series shall become the property of the corporation, and may be issued in any subsequent series. Payment of dues on shares of stock in each series shall commence from the time that shares began to be issued in such series. Any such corporation shall have power by its by-laws to impose and collect a fine from each stockholder not exceeding ten per cent of the defaulted amount, for every neglect or refusal to make his payments of dues, or premium, or interest, when due, and to impose and collect a like fine successively on every regular pay-day during such default. Every such corporation hereafter formed shall also have power to charge an entrance fee upon each share of stock issued, not exceeding ten cents on each share, and may al-

so charge a transfer fee not exceeding ten cents on each share, all of which shall be paid into the treasury and accounted for as all other funds of the association; provided, that building and loan associations heretofore incorporated may continue to charge and dispose of such entrance and transfer fees as are prescribed by the by-laws of such corporation. Payment of dues or interest may be made in advance, but no association shall allow interest on such advance payments at a greater rate than six per cent per annum, nor for a longer period than one year. En. Stats. 1891, 253.

Cal. Rep. Cit. 143, 258.

§ 635. **Retiring free shares.** The directors may, at their discretion, under the regulations prescribed in their by-laws, retire the free shares of any series of stock, at any time after four years from the date of their issue, by enforcing the withdrawal of the same; but whenever there shall remain in any series, at the expiration of five years after the date of its issue, an excess above one hundred free shares of the par value of two hundred dollars each, or two hundred free shares of the par value of one hundred dollars each, then it shall be the duty of the directors to retire annually twenty-five per centum of such excess existing at said expiration of five years after the date of its issue, so that no more than one hundred free shares shall remain in such series at the expiraton of nine years from the date of its issue; provided, that no more than one half the monthly receipts be used for that purpose; and thereafter the directors may, in their discretion, retire such other free shares as they consider to the best interest of the association to retire; provided, that whenever, under the provisions of this section, the withdrawal of shares is to be enforced, the shares to be retired shall be determined by lot, drawn from all free shares in the series, as shall be regulated by the by-laws, and the holders thereof shall be paid the amount actually paid in, and the full amount of earnings at the date of last apportionment of profits. En. Stats. 1891, 254.

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§ 636. **Maturity of stock.** When the stock in any series shall have reached its matured value, payment of dues thereon shall cease, and all of the stockholders in such series who have borrowed from the association shall be entitled to have their securities returned to them, and a satisfaction of the mortgages made by them to the association; and the holders of free shares of stock in such series

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shall be paid out of the funds of the association the matured value thereof, with such rate of interest as shall be determined by the by-laws, from the time the board of directors shall declare such share to have matured until paid; but at no time shall more than one-third of the receipts of the association be applicable to the payment of matured shares, without the consent of the board of directors. The order of the payment of the matured shares shall be determined by the by-laws. En. Stats. 1891, 254.

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§ 637. Loans and Installments. The moneys in the hands of the treasurer, and such sums as may be borrowed by the corporation for the purpose, shall be loaned out in open meeting to the member who shall bid the highest premium, or may be loaned at such premium as may be fixed from time to time, by the board of directors; and the premium may be deducted from the amount of the loan, or such proportion may be deducted as the by-laws shall provide, and in that case the balance of said premium shall be payable in such installments as the by-laws shall determine; provided, however, that where the premium is payable in installments, the number of installments into which the same is divided shall be uniformly applicable to all loans made by the corporation, and shall be payable at the times and in the manner as provided in the by-laws; and provided further, that in no case shall the amount loaned exceed the matured value of the shares pledged to secure the loan. En. Stats. 1891, 254.

Cal. Rep. Cit. 136, 526.

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§ 638. Rate of Interest. Security. The rate of interest on all loans may be fixed by the by-laws; but in case the by-laws fail to fix the rate, then it shall be fixed from time to time by the board of directors. For every loan made a note or obligation secured by a first mortgage or deed of trust upon unincumbered real estate shall be given, accompanied by a transfer and pledge to the association of at least one share of stock as collateral security for the repayment of the loan, or in lieu of a mortgage or deed of trust there may be pledged and transferred to the association for the payment of the loan, free shares, the withdrawal value of which under the by-laws at the time of such borrowing shall exceed the amount borrowed and interest thereon for six months. At the discretion of the board of directors the borrower may repay the loan and all arrears and interest and fines thereon at any time upon surrender of the shares pledged for the loan. En. Stats. 1891, 255. Am'd. 1897, 30; 1900-01, 268.

§ 638a. Withdrawal of stock, notice of. A stockholder desiring to withdraw from the association or to surrender a part or all of his stock may do so by giving thirty days' notice, in writing, of his intention. On the expiration of such notice, he is entitled to receive the full amount paid in upon the stock surrendered, together with such proportion of the earnings thereon as by the by-laws may provide, or as may be fixed by the board of directors; but not more than one half of the monthly receipts in any one month must be applied to withdrawals for that month, without the consent of the board of directors, and no stockholder must be permitted to withdraw whose stock is pledged to the association as security for a loan until such loan is fully paid. Such withdrawals must be paid in succession in the order that the notices of intention are given. En. Stats. 1905, 753.

This section is a codification of section 19 of the statute of 1893, page 229.—Code Commissioner's Note.

§ 639. Forfeiture—arrears in payments. Whenever any member shall be six months in arrears in the payment of his dues upon free shares, the secretary shall give him notice thereof, in writing, and a statement of his arrearages, by mailing the same to him at the last postoffice address given by him to the association, and if he shall not pay the same within two months thereafter, the board of directors may, at their option, declare his shares forfeited; and at the time of such forfeiture, the withdrawal value thereof shall be determined and stated, and the defaulting member shall be entitled to withdraw the same without interest, upon such notice as shall be required of a withdrawing shareholder. Whenever a borrowing member shall be six months in arrears in the payment of his dues, or interest, or premium, the whole loan shall become due at the option of the board of directors; and they may proceed to enforce collection upon the securities held by the association. The withdrawal value, at the time of the commencement of the action, of all shares pledged as collateral security for the loan, shall be applied to the payment of the loan, and said shares, from that time, shall be deemed surrendered to the association. En. March 21, 1872. Am'd. 1873-4, 217. Rep. 1891, [illegible]. En. Stats. 1891, 255.

Cal. Rep. Cit. 93, 306; 116, 414; 131, 341.

§ 640. Purchase of real estate. Any such association may purchase at any sale, public or private, any real es-

tate upon which it may have a mortgage, judgment, lien, or other incumbrance, or in which it may have an interest; and may sell, convey, lease, or mortgage the same, at pleasure, to any person or persons. En. March 21, 1872. Rep. 1891, 252. En. Stats. 1891, 255.
Cal. Rep. Cit. 93, 309; 131, 341.

p. 420 §641 R. & R. p. 420

§ 641. Borrowing money. Any association organized in pursuance of the provisions of this act may borrow money for the purpose of making loans or paying withdrawals. En. March 21, 1872. Rep. 1891, 252. En. Stats. 1891, 255.
Cal. Rep. Cit. 131, 341.

p. 420 §642 R. & R. p. 421

§ 642 Profits and losses. Profits and losses shall be apportioned at least annually, and shall be apportioned to all the shares in each series outstanding at the time of such apportionment, according to the actual value of such shares as distinguished from their withdrawal value. En. March 21, 1872. Rep. 1891 252. En. Stats. 1891, 255.
Cal. Rep. Cit. 131, 342.

p. 421 §643 R. & R. p. 421

§ 643. Membership. Any person of full age and sound mind may become a member of the association by taking one or more shares therein, and subscribing to the by-laws, and annexing to his signature his postoffice address. A minor may hold shares in the name of the parent, guardian, or next friend as trustee. The shares of stock in any such corporation held by any person, to the value of one thousand dollars, shall be exempt from execution. En. March 21, 1872. Rep. 1891, 252. En. Stats. 1891, 256.
Cal. Rep. Cit. 131, 342.

p. 421 §644 R. & R. p. 421

§ 644. Annual report. Every association organized under the provisions of this act, and every other association doing a like business, shall annually make a full report, in writing, of the affairs and condition of such corporation, within thirty days after its annual meeting, to the bank commissioners of this state. Such report shall be verified by the oath of the officers making the same, and a copy of the same shall be delivered to every stockholder, from the office of the corporation, who may call for such report. Every association shall make any further reports which the said commissioners may require, and in such form and as to such matters relating to the condition and conducting of the business of the association as such commissioners may designate; and said bank commissioners may at any time examine into the affairs of any and every of said associations. Any willful false swearing in making and verifying said reports shall be deemed perjury. Any

such association which shall fail to furnish the bank commissioners any such report required, within thirty days after demand, shall forfeit the sum of ten dollars per day for every day such report shall be delayed or withheld; which may be recovered in an action brought by the attorney general in the name of the people of this state; and all moneys so recovered shall be paid to the treasurer of the state, who shall pay the same into the "bank commissioners' fund." The state bank commissioners shall annually publish a full report of the condition of all associations formed under the provisions of this title, and every other association doing a like business in this state, in the same manner as they are now required to do in reference to savings banks. En. March 21, 1872. Rep. 1891, 252. En. Stats. 1891, 256.

Cal. Rep. Cit. 131, 342; 131, 344.

Section 1 of the act of 1891, p. 256, amending this section, provided that this section should apply to all such associations whether organized before or after the passage of the act.

See also Stats. 1867-8, 539, sec. 1.

§ 645. **Foreign corporations, deposit by.** No mutual building and loan association, or company, association, or corporation organized under the laws of any other state or territory, to carry on a business of a like character to that authorized by this title, shall be allowed to do business or to sell their stock in this state without first having deposited with the state controller or secretary of state the sum of fifty thousand dollars in money, or United States or municipal bonds of this state, or in mortgages upon real estate located within this state, as a guaranty fund for the protection and indemnity of residents of the state of California with whom such companies, associations, or corporations shall do business; the fund so deposited to be paid by the custodian thereof to the residents of California only, and not then until proof of claim by final judgment has been filed with the custodian of said fund against such foreign company, association, or corporation. Any of the securities so deposited may be withdrawn at any time upon others, herein provided for, of like amount being substituted in lieu thereof. Any person or persons who shall be found in this state as agent, or in any other capacity, representing such foreign company, association, or corporation which has not complied with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a

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fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. En. March 21, 1872. Rep. 1891, 252. En. Stats. 1891, 256.

Cal. Rep. Cit. 131, 342.

p. 421 § 646. **Electing to continue business.** Any building and loan association, now existing and heretofore incorporated, desiring to continue its existence under the provisions of this title, may do so if the holders of a majority of the stock, at their regular annual meeting, or at a special meeting of the stockholders called for that purpose, shall so elect. The notice of the meeting, whether regular or special, shall state as one of the objects of the meeting to vote on the question whether the corporation shall continue its existence under the provisions of this title; and the notice of meeting shall be published as required by section three hundred and one; and, in addition thereto, a similar notice shall be mailed to each stockholder at his postoffice address. Within thirty days after the holders of a majority of the stock at any such meeting have voted to continue the existence of the corporation under the provisions of this title, the secretary of the corporation shall, under oath, make and subscribe, as such secretary, a certificate, in writing, stating the calling of such meeting, the fact that the holders of a majority of the stock voted to continue the existence of the corporation under this title, which shall be filed in the office of the county clerk in which its original articles of incorporation have been filed, and shall file in the office of the secretary of state a certified copy thereof, according to the provisions of section two hundred and ninety-six; and the secretary of state shall issue his usual certificate, as provided in said section. Thereupon, such corporation shall be subject to all the provisions of this title, as though originally incorporated under the provisions hereof, except that no change in its name or amount of capital stock shall be made; but the name shall be the same as contained in the original articles. En. March 21, 1872. Rep. 1873-4, 217. En. Stats. 1891, 257.

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Cal. Rep. Cit. 131, 339; 131, 341; 131, 342.

§ 647. **Subject to provisions relating to bank commissioners.** All corporations doing the business of building and loan associations in this state shall be subject to the provisions of this title relating to the bank commission-

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ers. En. March 21, 1871. Rep. 1891, 252. En. Stats. 1891, 257.

Cal. Rep. Cit. 93, 306; 116, 414; 131, 341; 131, 342.

§ 648. **Definition of.** The name "building and loan association," as used in this act, shall include all corporations, societies, or organizations or associations doing a savings and loan or investment business on the building society plan, viz.: loaning its funds to its members or its shareholders, and whether issuing certificates of stock which mature at a time fixed in advance or not. En. March 21, 1872. Rep. 1873-4, 217. En. Stats. 1891, 257.

Cal. Rep. Cit. 127, 39; 131, 342.

§ 648½. **Taxation of.** En. Stats. 1891, 257. Rep. 1905, 753.

This section is no longer necessary; the statute referred to therein to wit: that of 1877-8, page 955, having been repealed. (Stats. 1897, p. 243.)—Code Commissioner's Note.

Cal. Rep. Cit. 136, 525.

TITLE XVII.

COLLEGES AND SEMINARIES OF LEARNING.

§ 649. Articles of incorporation.
§ 650. Board of trustees, powers of.
§ 651. Existing institutions may reincorporate under this act.

§ 649. **Articles of incorporation.** Any number of persons who may desire to establish a college or seminary of learning may incorporate themselves as provided in this part, except that in lieu of the requirements of secton two hundred and ninety, the articles of incorporation shall contain:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The place where the college or seminary is to be conducted.
4. The number of its trustees, which shall not be less than five nor more than fifteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired that the trustees, or any portion of them, shall belong to any organization, society, or church, such limitation shall be stated.
5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed. En. Stats. 1885, 133.

§ 650. Board of trustees, powers of. Unless otherwise provided in the articles of incorporation the board of trustees shall, as soon as organized, so classify themselves that one-fifth of their number shall go out of office every year, and thereafter the trustees shall hold office for five years. A majority of the trustees shall constitute a quorum for the transaction of business, and the office of the corporation shall be at the college or seminary.

The trustees shall have power:

1. To elect, by ballot, annually one of their number as president of the board.

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place; provided, that where there are graduates of the institution, such graduates may, under such rules as the board shall prescribe, nominate persons to fill vacancies in the board of trustees. Such nominations shall be considered by the board, but it may reject any or all such nominations, and of its own motion appoint others.

3. To elect additional trustees; provided, the whole number elected shall never exceed fifteen at any one time.

4. To declare vacant the seat of any trustee who shall absent himself from eight succeeding meetings of the board.

5. To receive and hold, by purchase, gift, devise, bequest, or grant, real or personal property for educational purposes connected with the corporation, or for the benefit of the institution.

6. To sell, mortgage, lease, and otherwise use and dispose of the property of the corporation in such manner as they shall deem most conducive to the prosperity of the corporation.

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary.

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees.

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees.

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and the signature of such of-

ficers of the corporation and the institution as they shall deem expedient.

11. To fix salaries of the president, professors, and other officers and employees of the college or seminary.

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; provided, that no by-laws or ordinance shall conflict with the constitution or laws of the United States, or of this state. En. Stats. 1885, 133.

§ 651. Existing institutions may reincorporate under this act. Any educational corporation, or body claiming to be such, now existing, may, by a unanimous vote of those of its trustees present at a special meeting called for that purpose, and of which due notice shall be given to each trustee, convey all its property, rights, and franchises to a corporation organized under this title. The fact that due notice of the meeting was given to each trustee shall be conclusively proven by the entries in the minutes of the corporation or body making the conveyance. Said minutes shall be certified to be correct by the president and secretary. En. Stats. 1885, 134.

TITLE XVIII.

CONSOLIDATION OF COLLEGES AND INSTITUTIONS OF HIGHER EDUCATION.

§ 652. Societies and organizations authorized to consolidate. Trustees. Annual reports.
§ 653. Transfer of property. Indebtedness. Specific grants. Dissolution.

§ 652. Societies and organizations authorized to consolidate. Trustees. Annual reports. Whenever any benevolent, religious, or fraternal organization or society, having a grand lodge, assembly, conference, or other legislative or representative head in the state of California, having two or more colleges or institutions of higher education under its patronage, shall, for the purpose of greater efficiency and simplicity in the administration of its educational interests, desire to consolidate such institutions under one management, such organization or society shall be and is authorized to consolidate such institutions under one management by complying with the following provisions:

First. Such grand lodge, assembly, conference, or other legislative or representative head having authorized a consolidation of its institutions, a new corporation shall be formed. The board of trustees of the new corporation shall at first consist of the persons constituting the boards of trustees of the several institutions, respectively, thus consolidated, and others; provided, the number of trustees shall not exceed forty-five. The board of trustees shall be so classified that the term of office of one third of its number shall expire each year; the successors of such trustees, as their terms expire, shall be elected by such grand lodge, assembly, conference, or other legislative or representative head at its annual meeting.

Second. The said board of trustees shall report annually to the grand lodge, assembly, conference, or other legislative or representative head controlling it, the condition of affairs of such corporation and the amount and manner of its receipts and expenditures. En. Stats. 1893, 4.

§ 653. Transfer of property. Indebtedness. Specific grants. Dissolution. The several boards of trustees of the institutions thus consolidated shall be and are hereby authorized and directed to transfer all property, real and personal, held by them, to the new corporation, as herein constituted, together with all powers, privileges, and authority conferred upon or enjoyed by them under their respective charters or acts of incorporation. The new corporation receiving such property shall assume all indebtedness and liabilities of such institutions as are thus consolidated, but shall not transfer such property from one location to another, except by an affirmative vote of not less than three-fourths of the said board of trustees of the new corporation, nor divert specific grants, donations, or bequests from the purposes for which such grants, donations, or bequests were made. That after the boards of trustees have conveyed the property, real and personal, of the various institutions to the new corporation, as hereinabove provided, and the same has been accepted by the said new corporation, then the franchises held by the corporations thus consolidating shall cease, and the said corporations shall be thereby dissolved. En. Stats. 1893, 4. Am'd. 1895, 40.

TITLE XIX.

Title added March 21, 1905. Stats. 1905, 594.

CO-OPERATIVE BUSINESS CORPORATIONS.

§ 653a. Purposes for which may be formed.

§ 653a. Purposes for which may be formed. Co-operative business corporations may be formed for doing any lawful business, and dividing a portion of their profits among persons other than their stockholders. Each of such corporations may, in its by-laws, in addition to the matters specified in section three hundred and three, provide the amount of profits which must be divided among persons other than its stockholders, and the manner in which and the persons among whom such division may be made. En. Stats. 1905, 594.

This section is a codification of that part of the statute of 1877-8, page 883, defining co-operative corporations, and the section is placed in a new title designated "Co-operative Business Corporations." That part of the statute declaring that the by-laws may provide for the number of votes to which each shareholder shall be entitled is omitted for the reason that it is special legislation, and probably unconstitutional within the decision in Krause v. Durbrow, 127 Cal. 681. —Code Commissioner's Note.

TITLE XX.

Title added March 21, 1905. Stats. 1905, 595.

CO-OPERATIVE BUSINESS ASSOCIATIONS.

§ 653b. Formation and purposes of.
§ 653c. Rights, interests, and liabilities of members.
§ 653d. The articles of association.
§ 653e. The by-laws.
§ 653f. Execution against the association or its members.
§ 653g. Purpose of the association, how may be altered.
§ 653h. Powers of the association.
§ 653i. Consolidation of associations.
§ 653j. Dissolution and winding up of association.
§ 653k. Quo warranto to inquire into the right of an association to do business.
§ 653l. What corporations or associations are not affected by this title.

§ 653b. Formation and purposes of. Five or more persons may form a co-operative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member. Such certificate cannot be assigned, so that the assignee can, by its transfer, become a member

of the association, but, by a resolution of its board of directors, such certificate may be transferred, and the transferee made a member in lieu of the last former holder. En. Stats. 1905, 595.

The statute of 1895, page 221, is codified in the above sections which are placed in a title designated "Co-operative Business Associations."—Code Commissioner's Note.

§ 653c. Rights, interests, and liabilities of members. In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, are eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws. En. Stats. 1905, 595.

See note to § 653b, ante.

§ 653d. The articles of association. Every association formed under this title must prepare articles of association, in writing, stating: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, not to exceed fifty years, the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of associaton must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged must be filed in the office of the clerk of the county wherein the principal business of the association is to be transacted, and a copy thereof certified by

such clerk, with the secretary of state, who must thereupon issue his certificate in the form, and having the effect prescribed in section two hundred and ninety-six. En. Stats. 1905, 595.

See note to § 653b, ante.

§ 653e. The by-laws. Every association formed under this title must, within forty days after it so becomes an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this title. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide. Such association may, by its by-laws, provide for the time, place and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise, provided, the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member must be required to pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for nonpayment or nonperformance; the method, time, and manner of per-

mitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed. The by-laws must provide for the time and manner in which profits must be divided among the members, and what proportion of the profits, if any, must be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business in transacted. En. Stats. 1905, 596.

See note to § 653b, ante.

§ 653f. Execution against the association or its members. The property of such association is subject to attachment and execution for its lawful debts. The interest of a member in such association, if sold upon execution, or any judicial or governmental order whatever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653g. Purpose of the association, how may be altered. The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-

laws provide for the election of directors. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653h. Powers of the association. Every association formed under this title has power of succession by its associate name for fifty years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653l. Consolidation of associations. Two or more associations formed and existing under this title, or under any pre-existing law authorizing their formation for the same purposes, may be consolidated, upon such terms, and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such association. Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the county clerk of the county wherein the principal business of the association is to be transacted, and a certified copy thereof in the office of the secretary of state, and pay the same fees for filing and recording as required by this code for the filing and recording of the certified copy of the original articles of association; and from and after the filing of such certified copy, the former associations comprising the component parts cease to exist, and the consolidated association succeeds to all the rights, duties, and powers of the component associations, and is possessed of all the rights, duties, and powers

prescribed in the agreement of consolidated association not inconsistent with this title, and is subject to all the liabilities and obligations of the former component associations, and succeeds to all the property and interests thereof, and may make by-laws and do all things permitted by this title. En. Stats. 1905, 598.

See note to § 653b, ante.

§ 653j. Dissolution and winding up of association. Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two thirds of the members. Such request must be addressed to the directors, and must specify reasons why the winding up of the affairs of the association is deemed advisable, and must name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom must thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors ceases and the persons appointed must proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association must be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the State of California by its attorney general. En. Stats. 1905, 598.

See note to § 653b, ante.

§ 653k. Quo warranto to inquire into the right of an association to do business. The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at the suit of the attorney general of this state, but not otherwise. En. Stats. 1905, 599.

See note to § 653b, ante.

§ 6531. What corporations or associations are not affected by this title. This title is not applicable to railroads, telegraph, telephone, banking, insurance, building and loan, or any other corporation, unless the special provisions of this code, applicable thereto, are complied with. En. Stats. 1905, 599.

See note to § 653b, ante.

DIVISION SECOND.

Part I. Property in General, §§ 654-749.

II. Real or Immovable Property, §§ 755-940.

III. Personal or Movable Property, §§ 946-994.

IV. Acquisition of Property, §§ 1000-1425.

PART I.

PROPERTY IN GENERAL.

Title I. Nature of Property, §§ 654-663.
II. Ownership, §§ 669-742.
III. General Definitions, §§ 748-749.

TITLE I.

NATURE OF PROPERTY.

§ 654. Property, what.
§ 655. In what property may exist.
§ 656. Wild animals.
§ 657. Real and personal.
§ 658. Real property.
§ 659. Land.
§ 660. Fixtures.
§ 661. Fixtures attached to mines.
§ 662. Appurtenances.
§ 663. Personal property.

§ 654. Property, what. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property. En. March 21, 1872.

Cal. Rep. Cit. 109, 37; 116, 343; 126, 119; 131, 307.

As to the meaning of "property" for the purposes of taxation: See Pol. Code, sec. 3617.

Real property: See sec. 658.

Personal property: See secs. 663, 953 et seq.

Franchises as property: See ante, sec. 388.

§ 655. In what property may exist. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the goodwill of a business, trademarks and signs, and of rights created or granted by statute. En. March 21, 1872.

Cal. Rep. Cit. 126, 119; 133, 71.

Counterfeiting a trademark, a misdemeanor: Pen. Code, sec. 350.

Products of the mind: See post, secs. 980 et seq.

Trademarks: See post, sec. 991.

Goodwill: See post, sec. 993.

Title deeds: See post, sec. 994.

Domestic animals, larceny of: See Pen. Code, sec. 491.

§ 656. Wild animals. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in the possession or disabled and immediately pursued. En. March 21, 1872.

Cal. Rep. Cit. 108, 244; 114, 388; 119, 321; 136, 531.

§ 657. Real and personal. Property is either:

1. Real or immovable; or,
2. Personal or movable. En. March 21, 1872.

Cal. Rep. Cit. 101, 120; 113, 353; 142, 539.

§ 658. Real property. Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law. En. March 21, 1872.

Cal. Rep. Cit. 60, 410; 62, 184; 77, 402; 80, 250; 86, 338; 109, 36; 118, 636; 126, 605; 138, 586; 140, 187; 142, 539; 144, 454; 147, 7; 147, 354.

Land defined: See sec. 659, infra.

Fixtures: See secs. 660 et seq., infra.

Appurtenances: See sec. 662.

§ 659. Land. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance. En. March 21, 1872.

Cal. Rep. Cit. 118, 636; 140, 187; 142, 539.

§ 660. Fixtures. A thing is deemed to be affixed to land when it is attached to it by roots as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws. En. March 21, 1872.

Cal. Rep. Cit. 51, 596; 52, 394; 52, 396; 70, 6; 77, 191; 80, 250; 86, 338; 91, 379; 118, 636; 126, 605; 138, 586; 139, 167; 140, 187; 142, 539; 147, 7; 147, 354.

§ 661. Fixtures attached to mines. Sluice-boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine. En. March 21, 1872.

Cal. Rep. Cit. 76, 583; 76, 585; 80, 512; 102, 142; 118, 153; 118, 636; 142, 539.

§ 662. Appurtenances. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another. En. March 21, 1872.

Cal. Rep. Cit. 52, 395; 52, 396; 56, 13; 62, 184; 67, 497; 77, 402; 79, 590; 80, 315; 86, 338; 91, 155; 91, 190; 93, 368; 109, 36; 110, 585; 120, 490; 120, 493; 140, 187; 142, 539; 146, 400; 146, 440.

Easements and servitudes. See post, secs. 801 et seq.

§ 663. Personal property. Every kind of property that is not real is personal. En. March 21, 1872.

Cal. Rep. Cit. 113, 353; 142, 539.

Personal property: See ante, sec. 14, subd. 3; and Pol. Code, sec. 3617.

TITLE II.

OWNERSHIP.

Chapter I. Owners, §§ 669-672.
II. Modifications of Ownership, §§ 678-726.
III. Rights of Owners, §§ 732, 733.
IV. Termination of Ownership, §§ 739-742.

CHAPTER I.

OWNERS.

§ 669. Owner.
§ 670. Property of the state.
§ 671. Who may own property.
§ 672. Aliens inheriting must claim within five years.

§ 669. Owner. All property has an owner, whether that owner is the state, and the property public, or the

owner an individual, and the property private. The state may also hold property, as a private proprietor. En. March 21, 1872.

Cal. Rep. Cit. 73, 102.

§ 670. Property of the state. The state is the owner of all land below tide-water, and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the state; and all property of which there is no other owner. En. March 21, 1872. Am'd. 1873-4, 217.

Cal. Rep. Cit. 62, 259; 69, 127; 70, 209; 138, 558.
Property of the state: Pol. Code, secs. 40-44.
Public lands: See Pol. Code, secs. 3395 et seq.
Escheat: See post, secs. 1405, 1406.

§ 671. Who may own property. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this state. En. March 21, 1872. Am'd. 1873-4, 218.

Cal. Rep. Cit. 65, 594; 65, 595; 67, 382; 67, 386; 70, 155; 76, 296; 127, 434; 127, 435; 127, 436; 127, 437.

Alien's right to inherit property: See post, secs. 1404 et seq.
Aliens, control of property by: Cal. Const., art. 1, sec. 17.

§ 672. Aliens inheriting must claim within five years. If a nonresident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in title VIII, part III, Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 65, 594; 67, 383; 67, 386; 70, 156; 70, 157; 143, 140; 143, 197; 143, 198.

Escheated estates: See Code Civ. Proc., secs. 1269-1272.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

Article I. Interests in Property, §§ 678-703.
II. Conditions of Ownership, §§ 707-711.
III. Restraints upon Alienation, §§ 715-718.
IV. Accumulations, §§ 722-726.

ARTICLE I.

INTERESTS IN PROPERTY.

§ 678. Ownership, absolute or qualified.
§ 679. When absolute.
§ 680. When qualified.
§ 681. Several ownership, what.
§ 682. Ownership of several persons.
§ 683. Joint interest, what.
§ 684. Partnership interest, what.
§ 685. Interest in common, what.
§ 686. What interests are in common.
§ 687. Community property.
§ 688. Interests as to time.
§ 689. Present interest, what.
§ 690. Future interest, what.
§ 691. Perpetual interest, what.
§ 692. Limited interest, what.
§ 693. Kinds of future interests.
§ 694. Vested interests.
§ 695. Contingent interests.
§ 696. Two or more future interests.
§ 697. Certain future interests not to be void.
§ 698. Posthumous children.
§ 699. Qualities of expectant estates.
§ 700. Same.
§ 701. Interests in real property.
§ 702. Same.
§ 703. What future interests are recognized.

§ 678. Ownership, absolute or qualified. The ownership of property is either:

1. Absolute; or,

2. Qualified. En. March 21, 1872.

Cal. Rep. Cit. 107, 420; 116, 345; 131, 307.

§ 679. When absolute. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws. En. March 21, 1872.

Cal. Rep. Cit. 105, 470; 106, 680; 109, 555; 112, 399; 116, 345.

§ 680. When qualified. The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited;
3. When the use is restricted. En. March 21, 1872.

Cal. Rep. Cit. 107, 420; 112, 399; 116, 345; 133, 422.

§ 681. Several ownership, what. The ownership of property by a single person is designated as a sole or several ownership. En. March 21, 1872.

§ 682. Ownership of several persons. The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife. En. March 21, 1872.

Cal. Rep. Cit. 112, 399; 116, 342. Subd. 3—136, 463.

§ 683. Joint interest, what. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. En. March 21, 1872.

Cal. Rep. Cit. 127, 149; 141, 435.
See secs. 685, 686, infra.

§ 684. Partnership interest, what. A partnership interest is one owned by several persons in partnership, for partnership purposes. En. March 21, 1872.

Cal. Rep. Cit. 65, 48; 102, 386.
Partnership: See post, secs. 2395 et seq.

§ 685. Interest in common, what. An interest in common is one owned by several persons, not in joint ownership or partnership. En. March 21, 1872.

Cal. Rep. Cit. 141, 435.

Tenancy in common: See ante, sec. 683; post, sec. 686.
Partition: See Code Civ. Proc., secs. 752 et seq.
Husband and wife as tenants in common: See ante, sec. 161.
Devise or legacy to two or more makes them owners in common: See post, sec. 1350.

§ 686. What interests are in common. Every interest created in favor of several persons in their own right is

an interest in common, unless acquired by them in partnership, for partnership purposes or unless declared in its creation to be a joint interest, as provided in section 683, or unless acquired as community property. En. March 21, 1872.

Cal. Rep. Cit. 141, 435.

Interests in common: See ante, secs. 683, 685.

§ 687. Community property. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. En. March 21, 1872.

Cal. Rep. Cit. 70, 284; 116, 342.

Community property: See ante, sec. 164.

§ 688. Interests as to time. In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,

2. Perpetual or limited. En. March 21, 1872.

Cal. Rep. Cit. 107, 420.

§ 689. Present interest, what. A present interest entitles the owner to the immediate possession of the property. En. March 21, 1872.

Cal. Rep. Cit. 107, 420.

§ 690. Future interest, what. A future interest entitles the owner to the possession of the property only at a future period. En. March 21, 1872.

Cal. Rep. Cit. 79, 622; 104, 301; 107, 420; 122, 627; 133, 422.

Accumulations as future interests: See secs. 722 et seq., and 733.

Conditions upon the enjoyment of estates: See secs. 707 et seq.

Terminating future interests: See secs. 739 et seq.

§ 691. Perpetual interest, what. A perpetual interest has a duration equal to that of the property. En. March 21, 1872.

§ 692. Limited interest, what. A limited interest has a duration less than that of the property. En. March 21, 1872.

§ 693. Kinds of future interests. A future interest is either:

1. Vested; or,
2. Contingent. En. March 21, 1872.

§ 694. Vested interests. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest. En. March 21, 1872.

Cal. Rep. Cit. 73, 102; 122, 627; 132, 574; 132, 578; 133, 422; 136, 106.

§ 695. Contingent interests. A future interest is contingent, whilst the person in whom or the event upon which, it is limited to take effect remains uncertain. En. March 21, 1872.

Cal. Rep. Cit. 120, 84; 120, 85.

§ 696. Two or more future interests. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly. En. March 21, 1872.

§ 697. Certain future interests not to be void. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect. En. March 21, 1872.

§ 698. Posthumous children. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent. En. March 21, 1872.

Future interests defeated by birth of posthumous child: See post, sec. 739.

§ 699. Qualities of expectant estates. Future interests pass by succession, will, and transfer, in the same manner as present interests. En. March 21, 1872.

Cal. Rep. Cit. 104, 301; 107, 420; 108, 649; 122, 627; 133, 422.

§ 700. Same. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind. En. March 21, 1872.

Cal. Rep. Cit. 70, 286; 104, 584; 112, 393; 124, 44; 138, 361; 141, 370.

§ 701. Interests in real property. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates and are specially named and classified in part II of this division. En. March 21, 1872.

§ 702. Same. The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided. En. March 21, 1872.

§ 703. What future interests are recognized. No future interest in property is recognized by the law, except such as is defined in this division of the code. En. March 21, 1872.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

§ 707. Fixing the time of enjoyment.
§ 708. Conditions.
§ 709. Certain conditions precedent void.
§ 710. Conditions restraining marriage void.
§ 711. Conditions restraining alienation void.

§ 707. Fixing the time of enjoyment. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition. En. March 21, 1872.

Cal. Rep. Cit. 109, 330.

Conditional legacies: See post, secs. 1345 et seq.

§ 708. Conditions. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right. En. March 21, 1872.

Conditional obligations: See post, secs. 1434-1442.

Conditional limitation.—Remainder operating to abridge precedent estate: Post, sec. 778.

§ 709. Certain conditions precedent void. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the in-

strument takes effect and the condition is void. En. March 21, 1872.

Cal. Rep. Cit. 55, 566.

§ 710. Conditions restraining marriage void. Conditions imposing restraints upon marriage, except upon the marriage of a minor are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage. En. March 21, 1872. Am'd. 1873-4, 218.

Contracts in restraint of marriage: See post, sec. 1676.

§ 711. Conditions restraining alienation void. Conditions restraining alienation, when repugnant to the interest created, are void. En. March 21, 1872.

Cal. Rep. Cit. 64, 366; 74, 143; 110, 426; 110, 427; 141, 667.

See also post, secs. 715, 772, and the title on Uses and Trusts, post, secs. 847 et seq.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

§ 715. How long it may be suspended.
§ 716. Future interests void, which suspend power of alienation.
§ 717. Leases of agricultural land, for over ten years, void.
§ 718. Leases of city lots, for over fifty years, void.

§ 715. How long it may be suspended. The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 772. En. March 21, 1872.

Cal. Rep. Cit. 58, 473; 58, 481; 58, 482; 73, 103; 74, 143; 79, 622; 105, 197; 108, 646; 108, 647; 108, 656; 108, 657; 108, 658; 109, 330; 118, 657; 118, 658; 119, 146; 121, 382; 123, 142; 124, 536; 133, 620; 136, 141; 136, 142; 144, 125; 144, 127.

See also, post, sec. 771.

§ 716. Future interests void, which suspend power of alienation. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when

there are no persons in being by whom an absolute interest in possession can be conveyed. En. March 21, 1872.

Cal. Rep. Cit. 73, 103; 79, 622; 108, 647; 108, 648; 119, 146; 121, 382; 123, 143; 124, 537; 136, 141; 136, 142.

§ 717. Leases of agricultural land, for over ten years, void. No lease or grant of land for agricultural purposes for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. En. March 21, 1872. Am'd. 1895, 76.

Cal. Rep. Cit. 141, 330.

§ 718. Leases of city lots, for over fifty years, void. No lease or grant of any town or city lot, for a longer period than fifty years, in which shall be reserved any rent or service of any kind, shall be valid; provided, that the property of any municipality, or any minor or incompetent person shall not be leased for a longer period than ten years. En. March 21, 1872. Am'd. 1903, 247.

Cal. Rep. Cit. 136, 142; 141, 667.

ARTICLE IV.

ACCUMULATIONS.

§ 722. Dispositions of income.
§ 723. Accumulations, when void.
§ 724. Accumulation of income.
§ 725. Other directions, when void in part.
§ 726. Application of income to support, etc., of minor.

§ 722. Dispositions of income. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests. En. March 21, 1872.

Cal. Rep. Cit. 58, 481; 79, 623.

§ 723. Accumulations, when void. All directions for the accumulation of the income of property, except such as are allowed by this title, are void. En. March 21, 1872.

Cal. Rep. Cit. 136, 103; 136, 142; 144, 127.

§ 724. Accumulation of income. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing

sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority. En. March 21, 1872.

Cal. Rep. Cit. 58, 480; 58, 482; 79, 623; 136, 142.

Ownership of undisposed accumulations: See sec. 733, post.

Accumulations liable for debts: See sec. 859.

Restraint upon disposition of beneficiary's interest: See sec. 867.

Bequests of income: See post, secs. 1357, subd. 3, 1366.

Annuities: See same sections.

§ 725. Other directions, when void in part. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority. En. March 21, 1872.

§ 726. Application of income to support, etc., of minor. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund. En. March 21, 1872.

Cal. Rep. Cit. 58, 481.

Maintenance of ward out of his estate: See Code Civ. Proc., secs. 1770, 1771.

CHAPTER III.

RIGHTS OF OWNERS.

§ 732. Increase of property.
§ 733. In certain cases who entitled to income of property.

§ 732. Increase of property. The owner of a thing also owns all its products and accessions. En. March 21, 1872.

Accessions to real property: See post, secs. 1013 et seq.

Accessions to personal property: See post, secs. 1025 et seq.

§ 733. In certain cases who entitled to income of property. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest. En. March 21, 1872.

Cal. Rep. Cit. 139, 689.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

§ 739. Future interests, when defeated.
§ 740. Same.
§ 741. Future interests, when not defeated.
§ 742. Same.

§ 739. Future interests, when defeated. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession. En. March 21, 1872.

Posthumous children: See ante, sec. 698.

§ 740. Same. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation. En. March 21, 1872.

§ 741. Future interests, when not defeated. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof. En. March 21, 1872.

Cal. Rep. Cit. 147, 559.

Future interests: See post, sec. 767.

§ 742. Same. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period. En. March 21, 1872.

TITLE III.

GENERAL DEFINITIONS.

§ 748. Income, what.
§ 749. Time of creation, what.

§ 748. Income, what. The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property. En. March 21, 1872.

§ 749. Time of creation, what. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest, within the meaning of this part of the code. En. March 21, 1872.

Cal. Rep. Cit. 79, 622; 108, 647; 123, 142; 124, 537.

PART II.

REAL OR IMMOVABLE PROPERTY.

Title I. General Provisions, § 755.
II. Estates in Real Property, §§ 761-811.
III. Rights and Obligations of Owners, §§ 818-841.
IV. Uses and Trusts, §§ 847-871.
V. Powers, §§ 878-940. [Repealed.]

TITLE I.

GENERAL PROVISIONS.

§ 755. Real property, how governed.

§ 755. Real property, how governed. Real property within this state is governed by the law of this state, except where the title is in the United States. En. March 21, 1872. Am'd. 1873-4, 218.

Cal. Rep. Cit. 85, 282.

Territorial jurisdiction of the state: See Pol. Code, secs. 33, 34.

TITLE II.

ESTATES IN REAL PROPERTY.

Chapter I. Estates in General, §§ 761-781.
II. Termination of Estates, §§ 789-793.
III. Servitudes, §§ 801-811.

CHAPTER I.

ESTATES IN GENERAL.

§ 761. Enumeration of estates.
§ 762. What estate a fee simple.
§ 763. Conditional fees and estates tail abolished.
§ 764. Certain remainders valid.
§ 765. Freeholds. Chattels real. Chattel interests.
§ 766. Estates for life of a third person, when a freehold, etc.

§ 767. Future estates, limitations of.
§ 768. Reversions.
§ 769. Remainders.
§ 770. Suspended ownership.
§ 771. Suspension by trust.
§ 772. Contingent remainder in fee.
§ 773. Remainders, future and contingent estates, how created.
§ 774. Limitation of successive estates for life.
§ 775. Remainders.
§ 776. Contingent remainder on a term of years.
§ 777. Remainder of estates for life.
§ 778. Remainder upon a contingency.
§ 779. Heirs of a tenant for life, when to take as purchasers.
§ 780. Construction of certain remainders.
§ 781. Effect of power of appointment.

§ 761. Enumeration of estates. Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or,
4. Estates at will. En. March 21, 1872.

Cal. Rep. Cit. 79, 443; 142, 538.

See post, sec. 765.

§ 762. What estate a fee simple. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple, or an absolute fee. En. March 21, 1872. Am'd. 1873-4, 218.

Transferring fee, words of inheritance not essential: See sec. 1072, post.

Devising fee, "heirs" not essential: Sec. 1329.

§ 763. Conditional fees and estates tail abolished. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute. En. March 21, 1872.

Cal. Rep. Cit. 104, 302.

§ 764. Certain remainders valid. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death. En. March 21, 1872.

§ 765. **Freeholds. Chattels real. Chattel interests.** Estates of inheritance and for life are called estates of

freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution. En. March 21, 1872.

Cal. Rep. Cit. 113, 353; 142, 538; 142, 539.

§ 766. Estates for life of a third person, when a freehold, etc. An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold. En. March 21, 1872. Am'd. 1873-4, 218.

§ 767. Future estates, limitations of. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time. En. March 21, 1872.

Cal. Rep. Cit. 49, 374; 98, 451; 136, 141; 146, 447.
Future interests: See post, sec. 739 et seq.

§ 768. Reversions. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised. En. March 21, 1872.

Cal. Rep. Cit. 134, 322.

§ 769. Remainders. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name. En. March 21, 1872.

Cal. Rep. Cit. 120, 84.

§ 770. Suspended ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. En. March 21, 1872. Am'd. 1873-4, 218.

§ 771. Suspension by trust. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section 715. En. March 21, 1872.

Cal. Rep. Cit. 58, 481; 108, 647; 108, 648; 108, 656; 121, 382; 124, 537.

§ 772. Contingent remainder in fee. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority. En. March 21, 1872.

Cal. Rep. Cit. 58, 474; 58, 476; 58, 480; 79, 622; 119, 146; 124, 537; 128, 9.

§ 773. Remainders, future and contingent estates, how created. Subject to the rules of this title, and of part I of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency, which, if it should occur, must happen within the period prescribed in this title. En. March 21, 1872.

Cal. Rep. Cit. 120, 84; 128, 9; 136, 141.

§ 774. Limitation of successive estates for life. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created. En. March 21, 1872. Am'd. 1873-4, 219.

§ 775. Remainders. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term. En. March 21, 1872. Am'd. 1873-4, 219.

§ 776. Contingent remainder on a term of years. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder. En. March 21, 1872.

Cal. Rep. Cit. 136, 141.

§ 777. Remainder of estates for life. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate. En. March 21, 1872.

§ 778. Remainder upon a contingency. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation. En. March 21, 1872.

Cal. Rep. Cit. 120, 84.

See sec. 780, infra.

§ 779. Heirs of a tenant for life, when to take as purchasers. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life. En. March 21, 1872.

Cal. Rep. Cit. 70, 559; 104, 299; 104, 301.

§ 780. Construction of certain remainders. When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years. En. March 21, 1872.

§ 781. Effect of power of appointment. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed. En. March 21, 1872.

Cal. Rep. Cit. 132, 558; 147, 102.

CHAPTER II.

TERMINATION OF ESTATES.

§ 789. Tenancy at will may be terminated by notice.
§ 790. Effect of notice.
§ 791. Re-entry, when and how to be made.
§ 792. Summary proceedings in certain cases provided for.
§ 793. Notice not necessary before action.

§ 789. Tenancy at will may be terminated by notice. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than one month to be specified in the notice. En. March 21, 1872.

Cal. Rep. Cit. 56, 129; 66, 447; 67, 471; 69, 320; 101, 428; 105, 19; 113, 19; 113, 540; 140, 167.

Changing terms of tenancy: See sec. 827, post.

§ 790. Effect of notice. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession. En. March 21, 1872.

Cal. Rep. Cit. 66, 447; 140, 167.

§ 791. Re-entry, when and how to be made. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days' notice, as provided in sections 1161 and 1162, Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 56, 129; 56, 130; 63, 52; 66, 447; 138, 79.

§ 792. Summary proceedings in certain cases provided for. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in sections 1159 to 1175, both inclusive, of the Code of Civil Procedure. En. March 21, 1872.

§ 793. Notice not necessary before action. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, after the right to re-enter has accrued, without the notice prescribed in section seven hundred and ninety-one. En. March 21, 1872. Am'd. 1905, 599.

The words "in the district court," where they occur in the present section, are omitted.—Code Commissioner's Note.

Cal. Rep. Cit. 98, 425.

CHAPTER III.

SERVITUDES.

§ 801. Servitudes attached to land.
§ 802. Servitudes not attached to land.
§ 803. Designation of estates.
§ 804. By whom grantable.
§ 805. By whom held.
§ 806. Extent of servitudes.
§ 807. Apportioning easements.
§ 808. Rights of owner of future estate.
§ 809. Actions by owner and occupant of dominant tenement.
§ 810. Actions by owner of servient tenement.
§ 811. How extinguished.

§ 801. Servitudes attached to land. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;

2. The right of fishing;

3. The right of taking game;

4. The right of way;

5. The right of taking water, wood, minerals, and other things;

6. The right of transacting business upon land;

7. The right of conducting lawful sports upon land;

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;

9. The right of receiving water from or discharging the same upon land;

10. The right of flooding land;

11. The right of having water flow without diminution or disturbance of any kind;

12. The right of using a wall as a party wall;

13. The right of receiving more than natural support from adjacent land or things affixed thereto;

14. The right of having the whole of a division fence maintained by a coterminous owner;

15. The right of having public conveyances stopped, or of stopping the same on land;

16. The right of a seat in church;

17. The right of burial. En. March 21, 1872.

Cal. Rep. Cit. 56, 13; 69, 293; 83, 517; 83, 518; 90, 286; 91, 84; 120, 493; 136, 48; 146, 440. Subd. 4—132, 236. Subd. 8—120, 490.

Coterminous owners, rights and duties: See post, secs. 832, 841.

Easements passing with property: See post, sec. 1104.

Flow of water: See ante, sec. 552.

§ 802. **Servitudes not attached to land.** The following land burdens or servitudes upon land, may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game.

2. The right of a seat in church.

3. The right of burial.

4. The right of taking rents and tolls.

5. The right of way.

6. The right of taking water, wood, minerals, or other things. En. March 21, 1872. Am'd. 1873-4, 219.

Cal. Rep. Cit. 65, 48; 69, 323; 91, 84; 99, 212; 109, 37. Subd. 5—110, 585.

§ 803. **Designation of estates.** The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement. En. March 21, 1872.

§ 804. **By whom grantable.** A servitude can be created only by one who has a vested estate in the servient tenement. En. March 21, 1872.

§ 805. **By whom held.** A servitude thereon cannot be held by the owner of the servient tenement. En. March 21, 1872.

Cal. Rep. Cit. 110, 585.

Servitude extinguished by merger of estates: See post, sec. 811.

§ 806. **Extent of servitudes.** The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. En. March 21, 1872.

Cal. Rep. Cit. 65, 48; 81, 125; 92, 141; 108, 596; 146, 211.

§ 807. Apportioning easements. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement. En. March 21, 1872.

§ 808. Rights of owner of future estate. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenenment is occupied by a tenant. En. March 21, 1872.

§ 809. Actions by owner and occupant of dominant tenement. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto. En. March 21, 1872.

Cal. Rep. Cit. 146, 211.

§ 810. Actions by owner of servient tenement. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public. En. March 21, 1872.

Cal. Rep. Cit. 69, 221.

§ 811. How extinguished. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;

2. By the destruction of the servient tenement;

3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment. En. March 21, 1872.

Cal. Rep. Cit. 69, 292; 69, 294; 110, 585; 125, 425; 146, 644. Subd. 4—93, 213; 110, 126.

Extinguishment of servitude.—Subd. 1. Vesting of right to servitude and right to servient tenement in same person: See sec. 805, ante.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

Chapter I. Rights of Owners, §§ 818-834.
II. Obligations of Owners, §§ 840-841.

CHAPTER I.

RIGHTS OF OWNERS.

Article I. Incidents of Ownership, §§ 818-827.
II. Boundaries, §§ 829-834.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

§ 818. Rights of tenant for life.
§ 819. Rights of tenant for years, etc.
§ 820. Same.
§ 821. Rights of grantees of rents and reversions.
§ 822. Assigns of lessee, remedies against.
§ 823. Rights of lessees and their assignees, etc.
§ 824. Remedy on leases for life.
§ 825. Rent dependent on life.
§ 826. Remedy of reversioners, etc.
§ 827. Terms of lease may be changed by notice.

§ 818. Rights of tenant for life. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance. En. March 21, 1872.

Duties of tenants for life: See sec. 840, post.

§ 819. Rights of tenant for years, etc. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy. En. March 21, 1872.

Cal. Rep. Cit. 101, 428; 115, 625.

§ 820. Same. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section. En. March 21, 1872.

Cal. Rep. Cit. 86, 339.

§ 821. Rights of grantees of rents and reversions. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had. En. March 21, 1872.

Cal. Rep. Cit. 79, 443.

Grants of rent are not binding upon the tenant until he has notice thereof: Sec. 1111, post.

Hiring of real property generally: See secs. 1941 et seq.

§ 822. Assigns of lessee, remedies against. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. En. March 21, 1872. Am'd. 1873-4, 219; 1905, 599.

Cal. Rep. Cit. 63, 370; 144, 160.

§ 823. Rights of lessees and their assignees, etc. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises. En. March 21, 1872.

Cal. Rep. Cit. 66, 421.

§ 824. Remedy on leases for life. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. En. March 21, 1872.

§ 825. Rent dependent on life. Rent dependent on the life of a person may be recovered after as well as before his death. En. March 21, 1872.

§ 826. Remedy of reversioners, etc. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, not-

withstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action. En. March 21, 1872.

Cal. Rep. Cit. 75, 121.

p. 423

§827 Am'd. p. 423

§ 827. Terms of lease may be changed by notice. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. En. Stats. 1873-4, 220.

Cal. Rep. Cit. 86, 439; 105, 19.

Termination of tenancy at will: See sec. 789, ante.

ARTICLE II.

BOUNDARIES.

§ 829. Rights of owner.
§ 830. Boundaries by water.
§ 831. Boundaries by ways.
§ 832. Lateral and subjacent support.
§ 833. Trees whose trunks are wholly on land of one.
§ 834. Line trees.

§ 829. Rights of owner. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it. En. March 21, 1872.

§ 830. Boundaries by water. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide-water, takes to ordinary high-water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream. En. March 21, 1872. Am'd. 1873-4, 220.

Cal. Rep. Cit. 69, 127; 99, 308; 138, 425.

Navigable waters boundaries.—Navigable waters enumerated: See Pol. Code, secs. 2348, 2349, 2351.

§ 831. Boundaries by ways. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown. En. March 21, 1872.

Cal. Rep. Cit. 69, 206; 70, 540; 95, 665; 131, 99.

Highway as boundary: See post, sec. 1112.

§ 832. Lateral and subjacent support. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations. En. March 21, 1872. Am'd. 1873-4, 221.

Cal. Rep. Cit. 63, 271; 63, 272; 63, 273; 63, 274; 63, 276; 92, 98; 92, 603; 95, 499; 98, 348; 98, 349; 105, 57; 128, 503; 147, 611.

§ 833. Trees whose trunks are wholly on land of one. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another. En. March 21, 1872.

§ 834. Line trees. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common. En. March 21, 1872.

CHAPTER II.

OBLIGATIONS OF OWNERS.

§ 840. Duties of tenant for life.
§ 841. Monuments and fences.
§ 842. Owners of ditch, flume, etc.; liability of one to the other.
§ 843. Neglect to pay proportion of expense; liability.

§ 840. Duties of tenant for life. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance. En. March 21, 1872.

Cal. Rep. Cit. 136, 518.

Rights of tenants for life: See sec. 818, ante.

Decree declaring life estate terminated: Code Civ. Proc, sec. 1723.

§ 841. Monuments and fences. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;

2. The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value at that time, of any division fence made by the latter. En. March 21, 1872.

Cal. Rep. Cit. 51, 297; 67, 593; 103, 45; 103, 117. Subd. 2—119, 527.

§ 842. Owners of ditch, flume, etc.; liability of one to the other. When two or more persons are associated by agreement in the use of a ditch, flume, pipe-line or other conduit for the conveyance of water, or who are using such ditch, flume, pipe-line or other conduit, or any part thereof, for the irrigation of land or for any other lawful purpose, to the construction of which they or their grantors have contributed, he is liable to the others for the reasonable expenses of maintaining and repairing the same, and of distributing such water in proportion to the share to which he is entitled in the use of the water. En. Stats. 1905, 600.

The statute of 1889, page 202, relating to the protection of owners of ditches and flumes, is codified in the above sections. Section 3 of the statute is not codified for the reason that any matter in it which should be retained is fully covered by the general rules of law.—Code Commissioner's Note.

§ 843. Neglect to pay proportion of expense, liability. If any one of them neglects, after demand in writing, to pay his proportion of such expenses, he is liable therefor in an action for contribution, and in any judgment obtained against him interest from the time of such demand must be included. The action authorized by this section must be brought by any or all of the parties who have contributed more than his or their just proportion of such expenses, and may be joint or several, and therein plaintiff may recover as costs, reasonable counsel fees, to be fixed by the court. En. Stats. 1905, 600.

See note to § 842, ante.

TITLE IV.

USES AND TRUSTS.

§ 847. What uses and trusts may exist.
§ 848. Right to possession of land creates legal ownership. (Repealed.)
§ 849. Certain trusts unaffected. (Repealed.)
§ 850. Trustees of estate for use of another take no interest. (Repealed.)
§ 851. Preceding sections qualified. (Repealed.)

§ 852. Trust must be in writing.
§ 853. Transfer to one for money paid by another.
§ 854. Rights of creditors. (Repealed.)
§ 855. Section 853 qualified. (Repealed.)
§ 856. Purchasers protected.
§ 857. For what purposes express trusts may be created.
§ 858. Vesting of mortgage powers.
§ 859. Profits of land liable to creditors in certain cases.
§ 860. Exercise of vested powers.
§ 861. Creation of certain powers not prohibited. (Repealed.)
§ 862. And land, etc., to descend to persons entitled. (Repealed.)
§ 863. Trustees of express trusts to have whole estate.
§ 864. Author of trust may devise, etc.
§ 865. Title of grantee or devisee of trust property.
§ 866. Interests remaining in grantor of express trust.
§ 867. Restraining disposition of trusts.
§ 868. Same. (Repealed.)
§ 869. Effect of omitting trust in conveyance.
§ 870. Certain sales, etc., by trustees, void.
§ 871. When estate of trustee to cease.

§ 847. What uses and trusts may exist. Uses and trusts in relation to real property are those only which are specified in this title. En. March 21, 1872.

Cal. Rep. Cit. 58, 478; 58, 481; 80, 242; 107, 595; 116, 409; 124, 421; 132, 527; 132, 551; 132, 557; 140, 51.

Rules as to suspending power of alienation: Secs. 715, 716, 771, ante.

Trusts for accumulation of income: Secs. 722-726, ante.

Trusts in general: Secs. 2215-2224, post.

Trusts for third persons: Secs. 2250-2289, post.

§ 848. Right to possession of land creates legal ownership. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

Cal. Rep. Cit. 132, 535.

§ 849. Certain trusts unaffected. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

Cal. Rep. Cit. 132, 535.

§ 850. Trustees of estate for use of another take no interest. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

Cal. Rep. Cit. 132, 535.

§ 851. Preceding sections qualified. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

Cal. Rep. Cit. 132, 535.

§ 852. Trust must be in writing. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law. En. March 21, 1872.

Cal. Rep. Cit. 58, 483; 70, 452; 75, 526; 76, 471; 85, 446; 90, 607; 94, 72; 97, 261; 99, 314; 108, 656; 110, 5; 112, 284; 118, 107; 124, 421; 126, 192; 132, 27; 135, 279; 136, 96; 147, 389. Subd. 1—122, 427; 136, 155. Subd. 3—136, 634.

§ 853. Transfer to one for money paid by another. When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. En. March 21, 1872. Am'd. 1873-4, 221.

Cal. Rep. Cit. 67, 256; 67, 327; 68, 120; 74, 91; 75, 170; 77, 338; 80, 518; 85, 446; 92, 13; 122, 116; 127, 247; 132, 28; 136, 95; 136, 96; 136, 463; 138, 569; 142, 69; 144, 334; 144, 533; 146, 137.

§ 854. Rights of creditors. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

§ 855. Section 853 qualified. (Repealed.) En. March 21, 1872. Rep. 1873-4, 221.

§ 856. Purchasers protected. No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust. En. March 21, 1872.

Cal. Rep. Cit. 74, 91; 96, 307; 115, 335; 128, 365.

Bona fide purchasers, rights of: See sec. 2243, post.

Bona fide purchasers generally: See post, sec. 1214.

§ 857. For what purposes express trusts may be created. Express trusts may be created for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of title II of this part; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title. En. March 21, 1872. Am'd. 1873-4, 221.

Cal. Rep. Cit. 58, 478; 58, 481; 58, 483; 76, 144; 79, 67; 80, 242; 107, 595; 108, 648; 108, 656; 121, 385; 123, 144; 124, 420; 124, 421; 124, 497; 130, 135; 132, 527; 132, 528; 132, 559; 132, 564; 132, 567; 132, 624; 132, 625; 132, 626; 135, 279; 136, 103; 136, 155; 140, 52; 146, 747; 147, 102; 147, 103; 147, 389. Subd. 1—85, 506; 108, 646; 116, 409; 121, 382. Subd. 2—108, 644; 109, 330; 132, 623. Subd. 3—108, 644; 136, 102. Subd. 4—133, 423.

Surplus of rents and profits: See sec. 859, post.

Estate of trustee: See infra, sec. 863.

§ 858. Vesting of mortgage powers. Where a power to sell real property is given to a mortgagee, or other encumbrancer in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded. En. March 21, 1872. Rep. 1873-4, 222. En. 1873-4, 222.

Cal. Rep. Cit. 121, 384; 132, 557.

§ 859. Profits of land liable to creditors in certain cases. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution. En. March 21, 1872.

Cal. Rep. Cit. 139, 641.

§ 860. Exercise of vested powers. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. En. March 21, 1872. Rep. 1873-4, 222. En. 1873-4, 222.

Cal. Rep. Cit. 132, 537; 132, 552; 132, 557; 132, 558.

Death of cotrustee, the trust survives to the others: Sec. 2288, post.

§ 861. Creation of certain powers not prohibited. (Repealed.) En. March 21, 1872. Rep. 1873-4, 222, 223.

Cal. Rep. Cit. 132, 552.

§ 862. And land, etc., to descend to persons entitled. (Repealed.) En. March 21, 1872. Rep. 1873-4, 223.

Cal. Rep. Cit. 132, 552.

§ 863. Trustees of express trusts to have whole estate. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust. En. March 21, 1872.

Cal. Rep. Cit. 70, 331; 79, 68; 85, 506; 87, 456; 107, 596; 108, 648; 111, 636; 111, 638; 124, 537; 128, 9; 132, 536; 132, 539; 132, 576; 132, 577; 133, 422; 143, 271.

Enforcing performance of the trust: See post, "Obligation of Trustees," secs. 2228-2239, and secs. 2258-2263.

§ 864. Author of trust may devise, etc. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust. En. March 21, 1872.

Cal. Rep. Cit. 70, 240; 70, 331; 70, 332; 87, 456; 111, 638; 121, 383; 132, 547; 132, 553; 132, 563; 132, 576; 136, 105; 146, 749.

§ 865. Title of grantee or devisee of trust property. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them. En. March 21, 1872.

Cal. Rep. Cit. 70, 240; 121, 383; 146, 749.

§ 866. Interests remaining in grantor of express trust. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors. En. March 21, 1872.

Cal. Rep. Cit. 70, 331; 109, 331; 124, 420; 132, 576; 136, 105; 142, 16; 146, 749.

§ 867. Restraining disposition of trusts. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust. En. March 21, 1872. Am'd. 1873-4, 223.

Cal. Rep. Cit. 111, 637; 123, 422; 142, 17.

Accumulations: See ante, secs. 722 et seq.; sec. 859.

§ 868. Same. (Repealed.) En. March 21, 1872. Rep. 1873-4, 223.

§ 869. Effect of omitting trust in conveyance. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration. En. March 21, 1872. Am'd. 1873-4, 223.

Cal. Rep. Cit. 125, 12.

Purchaser, when charged with implied or resulting trust: See sec. 856, ante.

§ 870. Certain sales, etc., by trustees, void. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void. En. March 21, 1872.

Cal. Rep. Cit. 70, 331; 106, 534; 108, 649; 134, 645; 134, 657; 139, 594; 145, 164.

§ 871. Where estate of trustee to cease. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases. En. March 21, 1872.

Cal. Rep. Cit. 58, 72; 70, 331; 119, 409; 121, 384; 124, 420; 132, 575; 133, 52; 136, 105; 145, 163.

TITLE V.

POWERS.

Title V, of part II, of division II, on Powers, of the Civil Code, embracing sections of said code from section 878 to 945, inclusive, is repealed. En. March 21, 1872. Rep. 1873-4, 223.

§ 878.
Cal. Rep. Cit. 132, 557.

§ 880.
Cal. Rep. Cit. 108, 185.

§ 894.
Cal. Rep. Cit. 121, 384.

§ 895.
Cal. Rep. Cit. 121, 384; 132, 557.

§ 900.
Cal. Rep. Cit. 132, 557.

§ 942.
Cal. Rep. Cit. 127, 561.

PART III.

PERSONAL OR MOVABLE PROPERTY.

Title I. Personal Property in General, §§ 946, 947.
II. Particular Kinds of Personal Property, §§ 953, 954.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

§ 946. By what law governed.
§ 947. Future interests in perishable property, how protected. (Repealed.)

§ 946. By what law governed. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile. En. March 21, 1872. Rep. 1873-4, 223. En. 1875-6, 78.

Cal. Rep. Cit. 105, 199; 105, 201.

[§ 946 having been repealed by clerical error in 1874, was re-enacted at session of 1875-6.]

§ 947. Future interests in perishable property, how protected. (Repealed.) En. March 21, 1872. Rep. 1873-4, 223.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

Chapter I. Things in Action, §§ 953, 954.
II. Shipping, §§ 960-973.
III. Products of the Mind, §§ 980-985.
IV. Other Kinds of Personal Property, §§ 991-994.

CHAPTER I.

THINGS IN ACTION.

§ 953. Things in action defined.
§ 954. Transfer and survivorship.

§ 953. Things in action defined. A thing in action is a right to recover money or other personal property by a judicial proceeding. En. March 21, 1872. Am'd. 1873-4, 223.

Cal. Rep. Cit. 123, 161; 143, 534; 144, 633.

§ 954. Transfer and survivorship. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office. En. March 21, 1872.

Cal. Rep. Cit. 144, 260; 144, 633.

Transfer of obligations: Sec. 1458, post.

Suing on choses in action: See Code Civ. Proc., secs. 367-369, 1582, 1583.

CHAPTER II.

SHIPPING.

Article I. General Provisions, §§ 960-966.
II. Rules of Navigation, §§ 970-973.

ARTICLE I.

GENERAL PROVISIONS.

§ 960. Definition of a ship.
§ 961. Appurtenances and equipments.
§ 962. Foreign and domestic navigation.
§ 963. Foreign and domestic ships distinguished.
§ 964. Several owners.
§ 965. Owner for voyage.
§ 966. Registry, etc.

§ 960. Definition of a ship. The term "ship, or shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. En. March 21, 1872. Am'd. 1873-4, 224.

§ 961. Appurtenances and equipments. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances. En. March 21, 1872.

§ 962. Foreign and domestic navigation. Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation, when passing from place to place within the United States. En. March 21, 1872.

§ 963. Foreign and domestic ships distinguished. A ship in a port of the state to which it belongs is called a domestic ship; in another port it is called a foreign ship. En. March 21, 1872.

§ 964. Several owners. If a ship belong to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction. En. March 21, 1872.

§ 965. Owner for voyage. If the owner of a ship commits its possession, and navigation to another, that other, and not the owner, is responsible for its repairs and supplies. En. March 21, 1872.

Charter-party defined: See post, sec. 1959.

§ 966. Registry, etc. The registry, enrollment, and license of ships are regulated by acts of congress. En. March 21, 1872.

ARTICLE II.

RULES OF NAVIGATION.

§ 970. Rules of navigation.
1. Rules as to ships meeting each other.
2. The rule for sailing vessels.
3. Rules for steamers in narrow channels.
4. Same.
5. Rules for steam vessels on different courses.
6. Meeting of steamers.
§ 971. Collision from breach of rules.
§ 972. Breaches of such rules to imply willful default.
§ 973. Loss, how apportioned.

§ 970. Rules of navigation. In the case of ships meeting, the following rules must be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

1. Rules as to ships meeting each other. Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether close-hauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger and subject also to a due regard to the dangers of navigation, and, as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command;

2. Rules as to sailing vessels. In the case of sailing vessels, those having the wind fair must give way to those on a wind. When both are going by the wind, the vessel on the starboard tack must keep her wind and the one on

the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack;

3. **Rules for steamers in narrow channels.** A steamer navigating a narrow channel must, whenever it is safe and practicable keep to that side of the fairway or midchannel which lies on the starboard side of the steamer;

4. **Same.** A steamer when passing another steamer in such channel, must always leave the other upon the larboard side;

5. **Rules for steam vessels on different courses.** When steamers must inevitably or necessarily cross so near that by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other;

6. **Meeting of steamers.** The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within the sound of the steam-whistle, or by the regulations concerning lights upon steamers, prescribed by or under authority of the laws of the United States. En. March 21, 1872. Am'd. 1905, 600.

The amendment consists in the substitution of the words "by or under authority of the laws of the United States" after "steamers," in place of the words "under authority of the acts of congress, approved August thirteenth, eighteen hundred and fifty-two and April twenty-ninth, eighteen hundred and sixty-four."—Code Commissioner's Note.

For rules of navigation, etc.: See Pol. Code, secs. 2360-2379.

§ 971. Collision from breach of rules. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary. En. March 21, 1872.

§ 972. Breaches of such rules to imply willful default. Damage to person or property arising from the failure of a ship to observe any rule of section 970, must be deemed to have been occasioned by the willful default of the per-

son in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary. En. March 21, 1872.

§ 973. Loss, how apportioned. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained;

2. If neither was in fault, the loss must be borne by him on whom it falls;

3. If both were in fault, the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned;

4. If it cannot be ascertained where the fault lies, the loss must be equally divided. En. March 21, 1872.

CHAPTER III.

PRODUCTS OF THE MIND.

§ 980. How far the subject of ownership.
§ 981. Joint authorship.
§ 982. Transfer.
§ 983. Effect of publication.
§ 984. Subsequent inventor, author, etc.
§ 985. Private writings.

§ 980. How far the subject of ownership. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession. En. March 21, 1872.

Trademarks: See Pol. Code, secs. 3196 et seq., and sec. 991 of this code.

§ 981. Joint authorship. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

1. If the product is single, in equal proportions;

2. If it is not single, in proportion to the contribution of each. En. March 21, 1872.

§ 982. Transfer. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same. En. March 21, 1872.

§ 983. Effect of publication. If the owner of a product of the mind intentionally makes it public, a copy or repro-

duction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned. En. March 21, 1872.

§ 984. **Subsequent inventor, author, etc.** If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him. En. March 21, 1872.

§ 985. **Private writings.** Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law. En. March 21, 1872.

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

§ 991. Trademarks.
§ 992. Goodwill of business.
§ 993. Goodwill and name, transfer of.
§ 994. Title deeds.

§ 991. **Trademarks.** One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trademark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on. En. March 21, 1872. Am'd. 1873-4, 224.

Cal. Rep. Cit. 63, 446; 100, 677; 103, 73; 136, 352.

As to trademarks: See Pol. Code, secs. 3196-3198; Pen. Code, secs. 350-354.

Act to protect trademarks: See post, Appendix, title Trademarks.

§ 992. **Goodwill of business.** The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired. En. March 21, 1872.

Cal. Rep. Cit. 71, 148; 114, 664; 124, 431; 145, 388.

Goodwill: See post, sec. 1674.

§ 993. **Goodwill and name, transfer of.** The goodwill of a business is property, transferable like any other, and the person transferring it may transfer with it the right

of using the name under which the business is conducted. En. March 21, 1872. Am'd. 1905, 602.

The change consists in the addition of the words "and the person transferring it may transfer with it the right of using the name under which the business is conducted." The purpose of the amendment is to authorize the transfer of the right of using the name with the transfer of the good will of the business.—Code Commissioner's Note.

Cal. Rep. Cit. 71, 148; 114, 664; 124, 431.

§ 994. Title deeds. Instruments essential to the title of real property, and which are not kept in a public office as a record, pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title. En. March 21, 1872.

Cal. Rep. Cit. 55, 566.

§995
Enact.

PART IV.

ACQUISITION OF PROPERTY.

Title I. Modes in which Property may be Acquired, §§ 1000-1001.
II. Occupancy, §§ 1006-1007.
III. Accession, §§ 1013-1033.
IV. Transfer, §§ 1039-1231.
V. Homesteads, §§ 1237-1269.
VI. Wills, §§ 1270-1377.
VII. Succession, §§ 1383-1408.
VIII. Water Rights, §§ 1410-1422.
IX. Hydraulic Mining, §§ 1424-1425.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

§ 1000. Property, how acquired.
§ 1001. Acquisition of property by exercise of eminent domain.

§ 1000. Property, how acquired. Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or
5. Succession. En. March 21, 1872.

Cal. Rep. Cit. 112, 394.

§ 1001. Acquisition of property by exercise of eminent domain. Any person may, without further legislative action, acquire private property for any use specified in section 1238 of the Code of Civil Procedure, either by consent of the owner or by proceedings had under the provisions of title VII, part III, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such title is "an agent of the state," or a "person in charge of such use," within the meaning of those terms as used in such title. This section shall be in

force from and after the fourth day of April, eighteen hundred and seventy-two. En. March 21, 1872.

Cal. Rep. Cit. 62, 183; 69, 301; 79, 162; 79, 550; 91, 248; 95, 111; 95, 112; 99, 213; 119, 165; 129, 11; 137, 632.

Eminent domain: See Code Civ. Proc., secs. 1237-1263.

TITLE II.

OCCUPANCY.

§ 1006. Simple occupancy.
§ 1007. Prescription.

§ 1006. Simple occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession. En. March 21, 1872.

Cal. Rep. Cit. 70, 240; 83, 288; 91, 385; 133, 636.

§ 1007. Prescription. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all. En. March 21, 1872.

Cal. Rep. Cit. 56, 75; 71, 458; 83, 289; 97, 273; 98, 349; 98, 350; 102, 684; 106, 695; 109, 18; 128, 187; 136, 293; 139, 525; 140, 388; 141, 501; 144, 27; 144, 344; 144, 594.

Adverse possession passing title: See Code Civ. Proc., secs. 321 et seq.

TITLE III.

ACCESSION.

Chapter I. To Real Property, §§ 1013-1019.
II. To Personal Property, §§ 1025-1033.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

§ 1013. Fixtures.
§ 1014. Alluvion.
§ 1015. Sudden removal of bank.
§ 1016. Islands, in navigable streams.
§ 1017. In unnavigable streams.
§ 1018. Islands formed by division of stream.
§ 1019. What fixtures tenant may remove.

§ 1013. Fixtures. When a person affixes his property to the land of another, without an agreement permitting

him to remove it, the thing affixed, except as provided in section ten hundred and nineteen, belongs to the owner of the land, unless he chooses to require the former to remove it. En. March 21, 1872. Am'd. 1873-4, 224.

Cal. Rep. Cit. 86, 339; 118, 636.

Fixtures: See ante, sec. 660.

§ 1014. Alluvion. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank. En. March 21, 1872.

Cal. Rep. Cit. 78, 636.

§ 1015. Sudden removal of bank. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof. En. March 21, 1872.

§ 1016. Islands, in navigable streams. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary. En. March 21, 1872.

Cal. Rep. Cit. 99, 309; 125, 662; 135, 550.

§ 1017. In unnavigable streams. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river. En. March 21, 1872.

§ 1018. Islands formed by division of stream. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner. En. March 21, 1872.

§ 1019. What fixtures tenant may remove. A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises. En. March 21, 1872. Rep. 1873-4, 224. En. 1873-4, 224.

Cal. Rep. Cit. 86, 339; 99, 639; 105, 19; 118, 636; 118, 639.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

§ 1025. Accession by uniting several things.
§ 1026. Principal part, what.
§ 1027. Same.
§ 1028. Uniting materials and workmanship.
§ 1029. Inseparable materials.
§ 1030. Materials of several owners.
§ 1031. Willful trespassers.
§ 1032. Owner may elect between the thing and its value.
§ 1033. Wrongdoer liable in damages.

§ 1025. Accession by uniting several things. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him. En. March 21, 1872.

Cal. Rep. Cit. 130, 320.

§ 1026. Principal part, what. That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united. En. March 21, 1872.

§ 1027. Same. If either part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part. En. March 21, 1872.

§ 1028. Uniting materials and workmanship. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials. En. March 21, 1872.

§ 1029. Inseparable materials. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship. En. March 21, 1872.

§ 1030. Materials of several owners. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials. En. March 21, 1872.

Cal. Rep. Cit. 128, 641.

§ 1031. Willful trespassers. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced. En. March 21, 1872.

§ 1032. Owner may elect between the thing and its value. In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled

to the product, the value thereof in place of the product. En. March 21, 1872.

§ 1033. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter. En. March 21, 1872.

Cal. Rep. Cit. 106, 205.

TITLE IV.

TRANSFER.

Chapter I. Transfer in General, §§ 1039-1085.
II. Transfer of Real Property, §§ 1091-1115.
III. Transfer of Personal Property, §§ 1135-1153.
IV. Recording Transfers of Real Property, §§ 1158-1217.
V. Unlawful Transfers, §§ 1227-1231.

CHAPTER I.

TRANSFERS IN GENERAL.

Article I. Definition of Transfer, §§ 1039-1040.
II. What may be Transferred, §§ 1044-1047.
III. Mode of Transfer, §§ 1052-1060.
IV. Interpretation of Grants, §§ 1066-1072.
V. Effect of Transfer, §§ 1083-1085.

ARTICLE I.

DEFINITION OF TRANSFER.

§ 1039. Transfer, what.
§ 1040. Voluntary transfer.

§ 1039. Transfer, what. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another. En. March 21, 1872.

Cal. Rep. Cit. 58, 15; 58, 484; 106, 205; 145, 434.

§ 1040. Voluntary transfer. A voluntary transfer is an executed contract, subject to all rules of law concerning

contracts in general; except that a consideration is not necessary to its validity. En. March 21, 1872.

Cal. Rep. Cit. 75, 532; 79, 530; 95, 74; 108, 659; 122, 428; 143, 533; 145, 434.

Gifts: See secs. 1146 et seq.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

§ 1044. What may be transferred.
§ 1045. Possibility.
§ 1046. Right of re-entry can be transferred.
§ 1047. Owner ousted of possession may transfer.

§ 1044. What may be transferred. Property of any kind may be transferred, except as otherwise provided by this article. En. March 21, 1872.

Cal. Rep. Cit. 74, 623; 84, 283; 109, 87; 145, 434.

§ 1045. Possibility. A mere possibility, not coupled with an interest, cannot be transferred. En. March 21, 1872.

Cal. Rep. Cit. 74, 623; 104, 584; 138, 361; 141, 370.

§ 1046. Right of re-entry can be transferred. A right of re-entry, or of repossession for breach of condition subsequent, can be transferred. En. March 21, 1872.

Cal. Rep. Cit. 74, 623.

§ 1047. Owner ousted of possession may transfer. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession. En. March 21, 1872.

Cal. Rep. Cit. 55, 128; 74, 623.

Mortgage upon property held adversely: See post, sec. 2921.

ARTICLE III.

MODE OF TRANSFER.

§ 1052. When oral.
§ 1053. Grant, what.
§ 1054. Delivery necessary.
§ 1055. Date.
§ 1056. Delivery to grantee is necessarily absolute.
§ 1057. Delivery in escrow.
§ 1058. Surrendering or canceling grant does not reconvey.
§ 1059. Constructive delivery.
§ 1060. Gratuitous grants take effect immediately; exception. (Repealed.)

§ 1052. When oral. A transfer may be made without writing, in every case in which a writing is not expressly required by statute. En. March 21, 1872.

Cal. Rep. Cit. 70, 452; 121, 377; 128, 530; 128, 633; 144, 691.

What contracts must be in writing: See post, sec. 1624.

Unlawful transfers: See secs. 1227 et seq.

Fraudulent instruments and transfers: See post, secs. 3439 et seq.

§ 1053. Grant, what. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property. En. March 21, 1872. Am'd. 1873-4, 225.

Cal. Rep. Cit. 55, 565; 58, 15; 67, 556; 93, 668; 101, 240; 134, 605; 143, 536; 143, 649.

Covenants implied from a "grant" of realty: See post, sec. 1113.

§ 1054. Delivery necessary. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor. En. March 21, 1872.

Cal. Rep. Cit. 51, 74; 67, 556; 127, 467; 143, 536.

Constructive delivery: See sec. 1059, infra.

Contract in writing takes effect only from delivery: See post, sec. 1626.

§ 1055. Date. A grant duly executed is presumed to have been delivered at its date. En. March 21, 1872.

Cal. Rep. Cit. 61, 148; 75, 243; 108, 268; 120, 315; 122, 362; 135, 314; 135, 319.

§ 1056. Delivery to grantee is necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 137, 531.

§ 1057. Delivery in escrow. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the

third person, and subject to condition, it is called an escrow. En. March 21, 1872.

Cal. Rep. Cit. 101, 240; 125, 149; 147, 705.

§ 1058. Surrendering or canceling grant does not reconvey. Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title. En. March 21, 1872.

Cal. Rep. Cit. 147, 705.

§ 1059. Constructive delivery. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 67, 556; 67, 557; 128, 546.

§ 1060. Gratuitous grants take effect immediately; exception. (Repealed.) En. March 21, 1872. Rep. 1873-4. 225.

ARTICLE IV.

INTERPRETATION OF GRANTS.

§ 1066. Grants, how interpreted.
§ 1067. Limitations, how controlled.
§ 1068. Recitals, when resorted to.
§ 1069. Interpretation against grantor.
§ 1070. Irreconcilable provisions.
§ 1071. Meaning of "heirs" and "issue," in certain remainders.
§ 1072. Words of inheritance unnecessary.

§ 1066. Grants, how interpreted. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article. En. March 21, 1872.

Cal. Rep. Cit. 103, 518; 104, 300.

Interpretation of contracts: See post, secs. 1636, 1641.

§ 1067. Limitations, how controlled. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct. En. March 21, 1872.

Cal. Rep. Cit. 86, 522.

§ 1068. Recitals, when resorted to. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction. En. March 21, 1872.

§ 1069. Interpretation against grantor. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor. En. March 21,1 872.

Cal. Rep. Cit. 83, 63; 94, 203; 108, 44; 118, 175; 128, 288; 138, 586; 144, 37.

§ 1070. Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails. En. March 21, 1872.

Cal. Rep. Cit. 94, 203; 103, 518; 104, 300.

§ 1071. Meaning of "heirs" and "issue," in certain remainders. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor. En. March 21, 1872.

§ 1072. Words of inheritance unnecessary. Words of inheritance or succession are not requisite to transfer a fee in real property. En. March 21, 1872.

Cal. Rep. Cit. 68, 561; 91, 81; 104, 301; 138, 586.

A fee simple is presumed to be intended to be conveyed, unless the contrary appears from the grant: See post, sec. 1105.

Devise of fee.—Word "heirs" not necessary: See post, sec. 1329.

What estate a fee: See ante, sec. 762.

ARTICLE V.

EFFECT OF TRANSFER.

§ 1083. What title passes.
§ 1084. Incidents.
§ 1085. Grant may inure to benefit of stranger.

§ 1083. What title passes. A transfer vests in the transferee all the actual title to the thing transferred which

the transferrer then has unless a different intention is expressed or is necessarily implied. En. March 21, 1872.

Cal. Rep. Cit. 92, 524; 143, 536; 145, 424.

§ 1084. Incidents. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself. En. March 21, 1872.

Cal. Rep. Cit. 69, 221; 80, 313; 92, 524; 104, 12; 120, 490; 120, 493; 138, 411; 145, 424.

What pass: See post, secs. 1104, 3540.

§ 1085. Grant may inure to benefit of stranger. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto. En. March 21, 1872.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

Article I. Mode of Transfer, §§ 1091-1095.
II Effect of Transfer, §§ 1104-1115.

ARTICLE I.

MODE OF TRANSFER.

§ 1091. Requisites for transfer of certain estates.
§ 1092. Form of grant.
§ 1093. Grant by married women, how acknowledged.
§ 1094. Power of attorney of married woman and how acknowledged.
§ 1095. Attorney in fact, how must execute for principal.
§ 1096. Conveyance when name of person has been changed.

§ 1091. Requisites for transfer of certain estates. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. En. March 21, 1872.

Cal. Rep. Cit. 51, 260; 53, 460; 55, 565; 73, 544; 81, 207; 101, 408; 122, 420; 130, 457; 132, 322; 134, 284.

Transfer of realty: Code Civ. Proc., secs. 1971-1973.

Requisites of transfer of real property: See corresponding section in Code of Civil Procedure, sec. 1971. See further, post, sec. 1624, subd. 5.

Conveyances by person whose name changed: See post, Appendix, title Deeds.

§ 1092. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A B, grant to C D all that real property situated in (insert name of county) county, state of California, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance. 'The Norris Ranch.')

"Witness my hand this (insert day) day of (insert month), 18—. "A B."

En. March 21, 1872.

Cal. Rep. Cit. 67, 539; 72, 82; 83, 193; 91, 81; 105, 183; 120, 315; 122, 420

See act of March 11, 1874, as to conveyances by person who has changed his or her name, Appendix, title Deeds.

§ 1093. Grant by married women, how acknowledged. A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and has the same effect as if she were unmarried. En. March 21, 1872 Am'd. 1895, 53.

Cal. Rep. Cit. 53, 460; 55, 56; 55, 565; 59, 513; 68, 140; 74, 350; 80, 67; 83, 536; 83, 537; 91, 607; 91, 610; 102, 207; 122, 349; 123, 494; 123, 495; 123, 497.

Conveyance by married women: See post, sec. 1187.

§ 1094. Power of attorney of married woman and how acknowledged. A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property. En. March 21, 1872. Am'd. 1895, 39.

Cal. Rep. Cit. 55, 565.

§ 1095. Attorney in fact, how must execute for principal. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact. En. March 21, 1872.

§ 1096. Conveyance when name of person has been changed. Any person in whom the title of real estate is

vested, who shall afterwards, from any cause, have his or her name changed, must, in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate. En. Stats. 1905, 602.

Section 1 of the statute of 1873-4, page 345, relating to conveyances of real estate, is codified in the above section. The rest of the statute should be added to section 4236 of the Political Code.—Code Commissioner's Note.

ARTICLE II.

EFFECT OF TRANSFER.

§ 1104. What easements pass with property.
§ 1105. When fee simple title is presumed to pass.
§ 1106. Subsequently acquired title passes by operation of law.
§ 1107. Grant, how far conclusive on purchasers.
§ 1108. Conveyances by owner for life or for years.
§ 1109. Grant made on condition subsequent.
§ 1110. Grants on condition, when absolute.
§ 1111. Grant of rents, reversions and remainders.
§ 1112. Boundary by highway, what passes.
§ 1113. Implied covenants
§ 1114. What the term "incumbrances" embraces.
§ 1115. Lineal and collateral warranties abolished.

§ 1104. What easements pass with property. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed. En. March 21, 1872.

Cal. Rep. Cit. 69, 221; 73, 554; 102, 367; 116, 698; 120, 490; 120, 491; 120, 492; 120, 493; 138, 411; 138, 520; 146, 440.

Transfer carries easements: See the general subject of easements, ante, sec. 801.

Transfer of a thing carries its incidents: Ante, sec. 1084; post, sec. 3540.

§ 1105. When fee simple title is presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lessor estate was intended. En. March 21, 1872.

Cal. Rep. Cit. 58, 15; 68, 561; 84, 614; 91, 81; 103, 518; 104, 299; 105, 182.

§ 1106. Subsequently acquired title passes by operation of law. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes

by operation of law to the grantee, or his successors. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 68, 561; 84, 614; 96, 209; 103, 110; 138, 520; 141, 371.

§ 1107. Grant, how far conclusive on purchasers. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded. En. March 21, 1872.

Cal. Rep. Cit. 5, 565; 55, 566; 75, 555; 75, 557; 75, 558; 97, 583; 109, 49; 113, 158; 113, 159; 120, 490; 122, 513; 126, 604.

§ 1108. Conveyances by owner for life or for years. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. En. March 21, 1872.

§ 1109. Grant made on condition subsequent. Where a grant is made upon condition subsequent, and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record. En. March 21, 1872.

Cal. Rep. Cit. 56, 248; 58, 73; 86, 592; 97, 657; 128, 291.

Conditions: See secs. 707 et seq.

§ 1110. Grants on condition, when absolute. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition. En. March 21, 1872. Am'd. 1873-4, 225.

Cal. Rep. Cit. 55, 565.

§ 1111. Grant of rents, reversions, and remainders. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, must suffer any damage thereby. En. March 21, 1872.

Cal. Rep. Cit. 79, 443; 82, 626; 97, 294.

Grantee's or devisee's right to rents: See ante, sec. 821.

§ 1112. Boundary by highway, what passes. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant. En. March 21, 1872. Am'd. 1873-4, 225.

Cal. Rep. Cit. 69, 206; 70, 540; 95, 665; 104, 188; 131, 99.

Highway as boundary. See ante, sec. 831.

§ 1113. Implied covenants. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. En. March 21, 1872.

Cal. Rep. Cit. 56, 619; 74, 267; 109, 424; 13, 352; 131, 111; 133, 456; 133, 458; 138, 624. Subd. 1—134, 418. Subd. 2—119, 294;

Covenants running with land: See post, secs. 1460-1467.

The "usual covenants": See post, sec. 1733.

§ 1114. What the term "incumbrances" embraces. The term "incumbrances" includes taxes, assessments, and all liens upon real property. En. March 21, 1872. Am'd. 1873-4, 225.

Cal. Rep. Cit. 106, 446.

§ 1115. Lineal and collateral warranties abolished. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law. En. March 21, 1872.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

Article I. Mode of Transfer, §§ 1135-1136.
II. What Operates as a Transfer, §§ 1140-1142.
III. Gifts, §§ 1146-1153.

ARTICLE I.

MODE OF TRANSFER.

§ 1135. When must be in writing.
§ 1136. Transfer by sale, etc.

§ 1135. When must be in writing. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

Transfer of ship: See post, sec. 3440.

§ 1136. Transfer by sale, etc. The mode of transferring other personal property by sale is regulated by the title on that subject, in division third of this code. En. March 21, 1872.

Transfer of obligations: See secs. 1457 et seq.

Sales of property generally: See post, secs. 1721 et seq.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

§ 1140. Transfer of title under sale.
§ 1141. Transfer of title under executory agreement for sale.
§ 1142. When buyer acquires better title than seller has.

§ 1140. Transfer of title under sale. The title to personal property sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not. En. March 21, 1872.

Cal. Rep. Cit. 76, 218; 86, 46; 107, 357; 145, 523; 147, 322.

Validity of sale of personal property: See post, secs. 1739 et seq.; and post, sec. 1624.

Delivery: See secs. 1753 et seq., and ante, sec. 1054.

Agreement to sell and buy defined: See post, sec. 1729.

§ 1141. Transfer of title under executory agreement for sale. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has competed it, prepared it for delivery and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance. En. March 21, 1872.

Cal. Rep. Cit. 63, 576; 77, 144; 93, 534; 146, 551.

Offer of performance: See post, secs. 1485 et seq.

§ 1142. When buyer acquires better title than seller has. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind, the transfer made by him. En. March 21, 1872.

Cal. Rep. Cit. 123, 632.

Sales by factor: See post, sec. 2369.

ARTICLE III.

GIFTS.

§ 1146. Gifts defined.
§ 1147. Gift, how made.
§ 1148. Gift not revocable.
§ 1149. Gift in view of death, what.
§ 1150. When gift presumed to be in view of death.
§ 1151. Revocation of gift in view of death.
§ 1152. Effect of will upon gift.
§ 1153. When treated as legacy.

§ 1146. Gifts defined. A gift is a transfer of personal property, made voluntarily, and without consideration. En. March 21, 1872.

Cal. Rep. Cit. 83, 265; 99, 21; 121, 678; 126, 534; 131, 66; 134, 605; 138, 170; 143, 536; 144, 294 144, 296; 146, 230.

§ 1147. Gift, how made. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless

there is an actual or symbolical delivery of the thing to the donee. En. March 21, 1872.

Cal. Rep. Cit. 106, 657; 113, 497; 121, 429; 121, 679; 131, 66; 138, 170; 143, 534; 144, 296.

§ 1148. Gift not revocable. A gift, other than a gift in view of death, cannot be revoked by the giver. En. March 21, 1872.

Revoking gifts mortis causa: Sec. 1151, infra.

§ 1149. Gift in view of death, what. A gift in view of death is one which is made in contemplation, fear or peril of death, and with intent that it shall take effect only in case of the death of the giver. En. March 21, 1872.

Cal. Rep. Cit. 105, 147.

Revoking gift in view of death: See sec. 1151, infra.

§ 1150. When gift presumed to be in view of death. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death. En. March 21, 1872.

Cal. Rep. Cit. 121, 677.

§ 1151. Revocation of gift in view of death. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation, shall not be affected by the revocation. En. March 21, 1872. Am'd. 1873-4, 226.

Cal. Rep. Cit. 99, 315; 132, 166.

Gift inter vivos not revocable: See sec. 1148, supra.

§ 1152. Effect of will upon gift. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift. En. March 21, 1872.

Cal. Rep. Cit. 132, 166.

§ 1153. When treated as legacy. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver. En. March 21, 1872.

CHAPTER IV.

RECORDING TRANSFERS.

Article I. What may be Recorded, §§ 1158-1165.
II. Mode of Recording, §§ 1169-1173.
III. Proof and Acknowledgments of Instruments, §§ 1180-1207.
IV. Effect of Recording or of the Want Thereof, §§ 1213-1217.

ARTICLE I.

WHAT MAY BE RECORDED.

§ 1158. What may be recorded.
§ 1159. Judgments may be recorded without acknowledgment.
§ 1160. Letters patent may be recorded without acknowledgment.
§ 1161. Acknowledgment of instruments; by a person; by a corporation.
§ 1162. Same.
§ 1163. Certificate of residence filed with recorder, showing where service of summons may be made; fee; index.
§ 1164. Transfers in trust, etc.
§ 1165. Fees of recorder to be indorsed

§ 1158. What may be recorded. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 55, 566; 67, 58; 76, 140; 108, 256; 108, 549; 146, 8.

Recording of conveyance by one whose name changed: See post, Appendix, title Deeds.

Compare with section 1215, as indicating what may be recorded.

Place of recording: See post, sec. 1169.

Execution of instrument and acknowledgment to entitle to be recorded: See sec. 1161, infra, and secs. 1180, et seq.

Bona fide purchasers without notice whose deeds are first recorded take precedence over prior grantee: Ante, sec. 1107; post, sec. 1214.

Recorders: See Pol. Code, secs. 4235 et seq.

Instrument, when deemed recorded: See post, sec. 1170.

Effect of recording, or want thereof: See post, secs. 1213 et seq.

§ 1159. Judgments may be recorded without acknowledgment. Judgments affecting the title to or possession of real property authenticated by the certificate of the clerk of the court in which such judgments were rendered

(and notices of location of mining claims), may be recorded without acknowledgment, certificate of acknowledgment, or further proof. The record of such notices of location of mining claims heretofore made in the proper office without acknowledgment or certificate of acknowledgment, or other proof shall have the same force and effect for all purposes as if the same had been duly acknowledged, or proved and certified as required by law. Affidavits showing work or posting of notices upon mining claims may also be recorded in the recorder's office of the county, where such mining claims are situated. En. March 21, 1872. Am'd. 1897, 97.

Cal. Rep. Cit. 129, 363.
Recorder must file judgments: Pol. Code, sec. 4238.

§ 1160. Letters patent may be recorded without acknowledgment. Letters patent from the United States or from the state of California, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof, and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until said original letters patent be recorded. En. March 21, 1872. Am'd. 1877-8, 85.

Cal. Rep. Cit. 84, 569.

§ 1161. Acknowledgment of instrument by a person; by a corporation. Before an instrument can be recorded, unless it belongs to the class provided for in either section eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or other person executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by article three of this chapter. En. March 21, 1872. Am'd. 1873-4, 226; 1905, 602.

The change consists in the substitution of the words "the person executing the same in behalf of the corporation" in place of "its president or secretary." The reason for the amendment is that an instrument may be executed on behalf of a corporation by an officer or person other than its president or secretary, when authorized by its board of directors. The section as it now stands appears to sanction its execution by those officers only.—Code Commissioner's Note.

Cal. Rep. Cit. 55, 565; 56, 129; 74, 420; 90, 477.

§ 1162. Same. An instrument, proved and certified pursuant to sections 1198 and 1199, may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

§ 1163. Certificate of residence filed with recorder, showing where service of summons may be made; fee; index. Any person, firm, or corporation, may record in the office of the county recorder of any county in the state of California a certificate setting forth the name of said person, firm, or corporation, and the place of residence of said person, firm, or corporation, and the place where service of summons may be made upon said person, firm, or corporation. The said certificate must be verified by the oath of the person, or of a member of the firm, or officer of the corporation making the same, and may be recorded without acknowledgment. Such person, firm or corporation may upon a change of place of residence file affidavit as herein provided and such last affidavit filed shall be the place designated as the place where service of summons may be made as herein provided. The fee of the recorder for recording said certificate shall be fifty cents; and the recorder shall keep in his office an index entitled "Index to Certificates of Residence," in which must be entered the name of the person, firm, or corporation in whose behalf said certificate was filed. En. March 21, 1872. Rep. 1873-4, 226. En. Stats. 1905, 139.

§ 1164. Transfers in trust, etc. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the titles on the special relation of debtor and creditor, and the chapter on mortgages respectively. En. March 21, 1872.

Cal. Rep. Cit. 108, 256.

Special relations of debtor and creditor: See post, secs. 3429 et seq.

Mortgages: See secs. 2920 et seq.

§ 1165. Fees of recorder to be indorsed. The recorder must in all cases indorse the amount of his feer for recordation on the instrument recorded. En. Stats. 1873-4, 274.

Cal. Rep. Cit. 55, 565.

Recorders: Pol. Code, secs. 4235 et seq.

ARTICLE II.

MODE OF RECORDING.

§ 1169. In what office.
§ 1170. Instrument, when deemed recorded.
§ 1171. Books of record.
§ 1172. Duties of recorder.
§ 1173. Transfer of vessels.

§ 1169. In what office. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated. En. March 21, 1872.

Cal. Rep. Cit. 103, 111.

§ 1170. Instrument, when deemed recorded. An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the recorder's office with the proper officer for record. En. March 21, 1872. Am'd. 1873-4, 226.

Cal. Rep. Cit. 55, 565; 57, 401; 67, 58; 90, 477; 93, 399; 102, 498; 104, 400; 121, 256; 131, 555; 131, 556; 131, 557.

Recording: See, for general consideration of the subject, ante, sec. 1158.

§ 1171. Books of record. Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another. En. March 21, 1872.

Cal. Rep. Cit. 124, 47; 131, 558; 146, 10.

§ 1172. Duties of recorder. The duties of county recorders, in respect to recording instruments, are prescribed by the Political Code. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

Recorders: See Pol. Code, secs. 4235 et seq.

§ 1173. Transfer of vessels. The mode of recording transfers of ships registered under the laws of the United States is regulated by acts of congress. En. March 21, 1872.

See U. S. Rev. Stats., secs. 4131 et seq.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 1180. By whom acknowledgments may be taken in this state.
§ 1181. Same.
§ 1182. By whom taken without the state.
§ 1183. Proof of, outside United States.
§ 1184. Deputy can take acknowledgment.
§ 1185. Requisites for acknowledgment.
§ 1186. Acknowledgment by married women. (Repealed.)
§ 1187. Conveyance by married woman.
§ 1188. Officer must indorse certificate.
§ 1189. General form of certificate. Taken outside of state.
§ 1190. Form of acknowledgment by corporation.
§ 1191. Form of certificate of acknowledgment by married women. (Repealed.)
§ 1192. Form of certificate of acknowledgment by attorney in fact.
§ 1193. Officers must affix their signatures.
§ 1194. Certificate of authority of justices in certain cases.
§ 1195. Proof of execution, how made.
§ 1196. Witness must be personally known to officer.
§ 1197. Witness must prove, what.
§ 1198. Handwriting may be proved, when.
§ 1199. Evidence of handwriting must prove, what.
§ 1200. Certificate of proof.
§ 1201. Officers authorized to do certain things.
§ 1202. When instrument is improperly certified, party may have action to correct error.
§ 1203. In certain cases parties interested may obtain judgment of proof of an instrument.
§ 1204. Effect of judgment in such action.
§ 1205. Conveyances heretofore made to be governed by then existing laws.
§ 1206. Recording to be governed by then existing laws.
§ 1207. Validating defective certificates of acknowledgment.

§ 1180. By whom acknowledgments may be taken in this state. The proof or acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or judge of a superior court. En. March 21, 1872. Am'd. 1880, 2.

Cal. Rep. Cit. 55, 565.

Act legalizing defective acknowledgments: See post, Appendix, title Acknowledgments; see, also, sec. 1307, infra.

Act to legalize acknowledgments taken by court commissioners: See post, Appendix, title Acknowledgments.

§ 1181. Same. The proof or acknowledgment of an instrument may be made in this state, within the city, city and county, county, or township for which the officer was elected or appointed, before either:

1. A clerk of a court of record; or,

2. A county recorder; or,

3. A court commissioner; or,

4. A notary public; or,

5. A justice of the peace. En. March 21, 1872. Am'd. 1880, 2; 1891, 214; 1905, 603.

Cal. Rep. Cit. 55, 565; 64, 269; 90, 478; 104, 682; 130, 447.

Act to legalize acknowledgments taken by court commissioners: See post, Appendix, title Acknowledgments.

Acknowledgment by deputy: See post, sec. 1184.

§ 1182. By whom taken without the state. The proof or acknowledgment of an instrument may be made without this state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States; or,

2. A justice, judge, or clerk of any court of record of any state; or,

3. A commissioner appointed by the governor of this state for that purpose; or,

4. A notary public; or,

5. Any other officer of the state where the acknowledgment is made authorized by its laws to take such proof or acknowledgment. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

§ 1183. Proof of, outside United States. The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

3. A judge of a court of record of the country where the proof or acknowledgment is made; or,

4. Commissioners appointed for such purposes by the governor of the state, pursuant to special statutes; or,

5. A notary public. En. March 21, 1872. Am'd. 1873-4, 227.

Cal. Rep. Cit. 55, 565; 110, 245.

§ 1184. Deputy can take acknowledgment. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal. En. March 21, 1872.

§ 1185. Requisites for acknowledgment. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf. En. March 21, 1872. Am'd. 1905, 603.

The change consists in the substitution of the words "person who executed it on behalf of the corporation," in place of "president or secretary of such corporation." (See note to section 1161.)—Code Commissioner's Note.

Cal. Rep. Cit. 55, 565; 96, 651; 97, 212; 101, 539; 131, 507.

Acknowledgments of married women: See post, sec. 1187.

The official character of the certifying officer should appear from the certificate: Post, sec. 1188.

Authentication of signature: See post, sec. 1193.

Correcting certificate: See post, sec. 1202.

§ 1186. Acknowledgment by married women. (Repealed.) En. March 21 1872. Rep. 1891, 137.

Cal. Rep. Cit. 55, 56; 55, 565; 59, 513; 60, 360; 63, 288; 65, 330; 68, 140; 74, 346; 74, 347; 74, 348; 74, 349; 74, 350; 76, 529; 76, 530; 80, 67; 83, 536; 91, 607; 98, 148; 101, 535; 101, 539; 102, 207; 113, 139; 122, 349; 123, 493; 123, 494.

§ 1187. Conveyance by married woman. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. En. March 21, 1872. Am'd. 1891, 137.

Cal. Rep. Cit. 55, 59; 59, 513; 60, 360; 68, 140; 74, 349; 74, 434; 83, 272; 91, 607; 91, 610; 101, 535; 123, 493; 123, 494; 123, 495; 131, 160.

§ 1188. Officer must indorse certificate. An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto, a certificate substantially in the

forms hereinafter prescribed. En. March 21, 1872. Am'd. 1873-4, 227.

Cal. Rep. Cit. 55, 565; 90, 478; 91, 610.

§ 1189. General form of certificate. Taken outside of state. The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form: "State of ———, county of ———, ss. On this ——— day of ———, in the year ———, before me (here insert name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same." Provided, however, that any acknowledgment taken without this state in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in this state; and provided further, that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk. En. March 21, 1872. Am'd. 1891, 137; 1897, 43.

Cal. Rep. Cit. 90, 478; 98, 468; 101, 539; 130, 125; 131, 508.

§ 1190. Form of acknowledgment by corporation. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of———

County of ———, —ss.

On this ———day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary, insert: known to me (or proved to me on the oath of ———) to be the person who executed the within instrument on behalf of the corporation therein

named) and acknowledged to me that such corporation executed the same. En. March 21, 1872. **Am'd. 1905, 603.**

The change consists in the substitution of the words "the person (or officer) who executed the within instrument on behalf of the corporation therein named," in place of the words "the president (or the secretary) of the corporation that executed the within instrument." (See note to section 1161.)—Code Commissioner's Note.

Cal. Rep. Cit. 55, 565; 101, 539.

§ 1191. Form of certificate of acknowledgment by married women. (Repealed.) En. March 21, 1872. Rep. 1891, 137.

Cal. Rep. Cit. 53, 460; 55, 56; 59, 513; 63, 288; 65, 330; 68, 140; 74, 346; 74, 347; 74, 348; 74, 350; 77, 57; 80, 67; 83, 536; 91, 607; 101, 535; 101, 539; 102, 207; 122, 349; 123, 493; 123, 494; 123, 496.

§ 1192. Form of certificate of acknowledgment by attorney in fact. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of ————.

County of ————, —ss.

On this ———— day of ————, in the year ————, before me [here insert the name and quality of the officer], personally appeared ————, known to me [or proved to me on the oath of ————] to be the person whose name is subscribed to the within instrument as the attorney in fact of ————, and acknowledged to me that he subscribed the name of ———— thereto as principal, and his own name as attorney in fact. En. March 21, 1872.

§ 1193. Officers must affix their signatures. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state of country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 90, 478.

§ 1194. Certificate of authority of justices in certain cases. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the

clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine. En. March 21, 1872.

Cal. Rep. Cit. 135, 176.

§ 1195. Proof of execution, how made. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,

2. By a subscribing witness; or,

3. By other witnesses, in cases mentioned in section 1198. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 55, 566; 64, 271.

§ 1196. Witness must be personally known to officer. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 89, 550.

§ 1197. Witness must prove, what. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 89, 550.

§ 1198. Handwriting may be proved, when. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,

2. When the parties and all the subscribing witnesses are nonresidents of the state; or,

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify, for the space of one hour after his appearance. En. March 21, 1872.

Cal. Rep. Cit. 55, 565; 64, 271.

§ 1199. Evidence of handwriting must prove, what. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness. En. March 21, 1872. Am'd. 1873-4, 227.

Cal. Rep. Cit. 55, 565.

Proving handwriting, generally: See Code Civ. Proc., secs. 1315, 1943-1945.

§ 1200. Certificate of proof. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

§ 1201. Officers authorized to do certain things. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in section 2093, Code of Civil Procedure;

2. To employ and swear interpreters;

3. To issue subpoena, as prescribed in section 1986, Code of Civil Procedure;

4. To punish for contempt, as prescribed in sections, 1991, 1993, 1994, Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 55, 565.

The civil damages and forfeiture to the party aggrieved are prescribed in section 1992, Code of Civil Procedure.

§ 1202. When instrument is improperly certified, party may have action to correct error. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the superior court to obtain a judgment correcting the certificate. En. March 21, 1872. Am'd. 1905, 604.

Cal. Rep. Cit. 53, 485; 53, 486; 53, 487; 55, 565; 59, 514; 63, 288; 73, 454; 116, 376.

§ 1203. In certain cases parties interested may obtain judgment of proof of an instrument. Any person interested under an instrument entitled to be proved for record may institute an action in the superior court against the proper parties to obtain a judgment proving such instrument. En. March 21, 1872. Am'd. 1905, 604.

Cal, Rep. Cit. 53, 485; 53, 486; 53, 487; 55, 566.

§ 1204. Effect of judgment in such action. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged. En. March 21, 1872.

Cal. Rep. Cit. 55, 566.

§ 1205. Conveyances heretofore made to be governed by then existing laws. The legality of the execution, acknowledged, proof, form, or record of any conveyance or other instrument made before this code goes into effect, executed, acknowledged, proved, or recored is snot affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed. En. March 21, 1872.

Cal. Rep. Cit. 53, 486; 55, 566.

§ 1206. Recording to be governed by then existing laws. All conveyances of real property made before this code goes into effect, and acknowledged or proved according

to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded, in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this chapter. En. March 21, 1872.

§ 1207. Validating defective certificates of acknowledgment. Any instrument affecting real property, which was, previous to the first day of January, one thousand nine hundred and three, copied into the proper book of record, kept in the office of any county recorder, imparts, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; provided, when such copying in the proper book of record occurred within fifteen years prior to the trial of the action, it is first shown that the original instrument was genuine. En. Stats. 1873-4, 228. Am'd. 1897, 64; 1903, 108.

Cal. Rep. Cit. 55, 566

Acts curing defective acknowledgments: See post, Appendix, title Acknowledgments.

ARTICLE IV.

EFFECT OF RECORDING OR OF THE WANT THEREOF.

§ 1213. Conveyance filed with recorder is constructive notice.
§ 1214. Conveyances to be recorded, or are void, etc.
§ 1215. Conveyance defined.
§ 1216. Powers of attorney, how revoked.
§ 1217. Unrecorded instrument valid between the parties.
§ 1218. Recording of certified copies of instruments.

§ 1213. Conveyance filed with recorder is constructive notice. Every conveyance of real property, acknowledged or proved, and certified, and recorded, as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance. En. March 21, 1872. Am'd. 1897, 59.

Cal. Rep. Cit. 46, 606; 46, 608; 46, 609; 55, 528; 63, 316; 70, 25; 74, 218; 90, 477; 96, 306; 96, 307; 98, 518; 104, 398; 104, 400; 109, 189; 128, 632; 131, 556; 131, 557; 134, 447; 144, 35; 146, 8.

Recording dates from time of deposit: See ante, sec. 1170.

§ 1214. **Conveyances to be recorded, or are void, etc.** Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action. En. March 21, 1872. Am'd. 1895, 50.

Cal. Rep. Cit. 46, 606; 46, 608; 46, 609; 63, 316; 65, 159; 74, 218; 74, 446; 75, 554; 77, 538; 82, 624; 82, 625; 85, 272; 96, 306; 96, 307; 97, 582; 98, 518; 100, 591; 109, 189; 113, 532; 119, 63; 124, 579; 126, 604; 126, 606; 130, 458; 131, 559; 131, 560; 134, 443; 144, 31; 144, 35; 145, 413.

Intent to defraud purchasers avoids deed: See post, sec. 1227.

§ 1215. **Conveyance defined.** The term "conveyance," as used in sections 1213 and 1214, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills. En. March 21, 1872.

Cal. Rep. Cit. 46, 607; 46, 608; 46, 609; 55, 528; 55, 566; 74, 218; 74, 349; 96, 307; 98, 518; 98, 529; 120, 179; 126, 603; 126, 606, 144, 35; 146, 8.

§ 1216. **Powers of attorney, how revoked.** No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded. En. March 21, 1872.

Cal. Rep. Cit. 55, 566.

§ 1217. **Unrecorded instrument valid between the parties.** An unrecorded instrument is valid as between the parties thereto and those who have notice thereof. En. March 21, 1872.

Cal. Rep. Cit. 82, 626; 85, 272; 96, 305; 96, 306; 100, 590; 104, 398; 108, 253; 108, 256; 118, 260, 119, 63; 119, 371; 124, 579; 130, 457; 144, 31; 145, 413; 146, 9.

§ 1218. Recording of certified copies of instruments. A certified copy of an instrument affecting the title to real property, once recorded may be recorded in any other county, and, when so recorded, the record thereof has the same force and effect as though it was of the original instrument. En. Stats. 1905, 604.

This is a new section. It is self-explanatory.—Code Commissioner's Note.

CHAPTER V.

UNLAWFUL TRANSFERS.

§ 1227. Certain instruments void against purchasers, etc.
§ 1228. Not void against purchaser having notice, unless fraud is mutual.
§ 1229. Power to revoke, when deemed executed.
§ 1230. Same.
§ 1231. Other provisions.

§ 1227. Certain instruments void against purchasers, etc. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 114, 535; 117, 146.

Transfers in fraud of creditors: See post, secs. 3439 et seq.

Fraudulent intent is question of fact: See post, sec. 3442.

§ 1228. Not void against purchaser having notice, unless fraud is mutual. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended. En. March 21, 1872.

Cal Rep. Cit. 55, 566.

§ 1229. Power to revoke, when deemed executed. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of

a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 132, 558.

§ 1230. Same. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it. En. March 21, 1872.

Cal. Rep. Cit. 132, 558.

§ 1231. Other provisions. Other provisions concerning unlawful transfers are contained in part II, division fourth, of this code, concerning the special relations of debtor and creditor. En. March 21, 1872.

See post, secs. 3439 et seq.

TITLE V.

HOMESTEADS.

Chapter I. General Provisions, §§ 1237-1261.
II. Homestead of the Head of a Family, §§ 1262-1265.
III. Homestead or Other Persons, §§ 1266-1269.
IV. Alienation of homesteads of insane persons.

CHAPTER I.

GENERAL PROVISIONS.

§ 1237. Homestead, of what it consists.
§ 1238. From what it may be carved.
§ 1239. From what not.
§ 1240. Exempt from forced sale.
§ 1241. Subject to, when.
§ 1242. How conveyed or incumbered.
§ 1243. How abandoned.
§ 1244. Same.
§ 1245. Proceedings on execution against homestead.
§ 1246. Same.
§ 1247. Same.
§ 1248. Same.
§ 1249. Same.
§ 1250. Same.
§ 1251. Same.
§ 1252. Same.
§ 1253. Same.
§ 1254. Same.
§ 1255. Same.
§ 1256. Same.
§ 1257. After sale, money equal to homestead exemption protected.
§ 1258. Compensation of appraisers.
§ 1259. Costs.
§ 1260. Who may select homestead, value of.
§ 1261. Head of family defined.

§ 1237. Homestead, of what it consists. The homestead consists of the dwelling-house in which the claimant resides, and the land on which the same is situated, selected as in this title provided. En. March 21, 1872. Am'd. 1873-4, 228.

Cal. Rep. Cit. 119, 166; 52, 630; 62, 134; 62, 289; 69, 198; 70, 239; 71, 302; 71, 303; 73, 592; 75, 424; 76, 643; 78, 312; 79, 610; 80, 73; 82, 228; 82, 233; 82, 237; 92, 519; 98, 478; 117, 353; 117, 355; 125, 325; 126, 528; 141, 649; 146, 429.

Homesteads—Constitutional protection: See Const. Cal. 1879, art. XVII, sec. 1.

Selection of homestead: Post, sec. 1262.

Exemption of homestead: Secs. 1240, 1241, infra.

Setting apart homestead for decedent's family: Code Civ. Proc., secs. 1474 et seq.

Abandonment of homestead: Sec. 1243, infra.

§ 1238. From what it may be carved. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property. En. March 21, 1872. Am'd. 1873-4, 229.

Cal. Rep. Cit. 70, 239; 70, 240; 76, 317; 117, 409; 121, 585; 144, 617.

§ 1239. From what not. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead. En. March 21, 1872. Am'd. 1873-4, 229.

Cal. Rep. Cit. 76, 529; 86, 154; 121, 585; 141, 462.

§ 1240. Exempt from forced sale. The homestead is exempt from execution or forced sale, except as in this title provided. En. March 21, 1872.

Cal. Rep. Cit. 54, 83; 59, 618; 70, 188; 70, 189; 72, 483; 72, 484; 74, 361; 82, 233; 82, 237; 100, 327; 108, 220; 111, 486; 111, 487; 113, 31; 121, 587; 125, 83; 132, 321; 140, 621; 146, 743.

§ 1241. Subject to, when. The homestead is subject to execution of forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises.

2. On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises.

3. On debts secured by mortgages on the premises, executed and acknowledged by husband and wife, or by an unmarried claimant.

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record. En. March 21, 1872. Am'd. 1873-4, 229; 1880, 7; 1887, 81.

Cal. Rep. Cit. 59, 618; 64, 78; 70, 188; 70, 559; 72, 485; 78, 474; 82, 229; 86, 141; 104, 34; 108, 220; 111, 486; 111, 487; 113, 31; 119, 372; 119, 373; 124, 106; 124, 107; 132, 321. Subd. 1—54, 83; 58, 2; 126, 530. Subd. 2—72, 484; 74, 360; 81, 649. Subd. 3—99, 48. Subd. 4—71, 480; 91, 97; 94, 79; 109, 168; 114, 567; 119, 371; 121, 256; 124, 417; 125, 83; 125, 325; 133, 413; 133, 414.

Mortgage of: See next section.

§ 1242. How conveyed or incumbered. The homestead of a married person cannot be conveyed or incumbered, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife. En. March 21, 1872.

Cal. Rep. Cit. 78, 312; 81, 220; 81, 221; 82, 229; 99, 48; 100, 238; 102, 207; 108, 220; 113, 31; 113, 32; 117, 354; 120, 61; 125, 83; 126, 476; 130, 393.

See sec. 1241, subds. 3, 4.

Act enabling parties to alienate and incumber homesteads: See post, Appendix, title Homesteads.

§ 1243. How abandoned. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;

2. By the claimant, if unmarried. En. March 21, 1872.

Cal. Rep. Cit. 58, 15; 65, 368; 68, 134; 71, 328; 74, 268; 78, 312; 81, 221; 82, 229; 93, 668; 93, 670; 94, 68; 98, 147; 100, 342; 106, 205; 113, 31; 117, 354; 121, 586; 146, 431. Subd. 1—121, 94; 130, 393.

§ 1244. Same. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded. En. March 21, 1872.

Cal. Rep. Cit. 65, 368; 71, 328; 81, 221; 95, 405; 100, 342; 113, 31; 121, 94; 121, 586.

§ 1245. Proceedings on execution against homestead. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 1241 is levied upon the homestead, the judgment creditor may apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof. En. March 21, 1872. Am'd. 1880, 7.

Cal. Rep. Cit. 59, 618; 59, 619; 62, 138; 70, 559; 74, 268; 75, 164; 79, 461; 79, 609; 82, 230; 85, 74; 86, 120; 86, 121; 86, 141; 144, 663; 146, 249; 146, 740; 146, 741; 146, 743.

Value of homestead: See sec. 1263.

§ 1246. Same. The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead;

2. The name of the claimant;

3. That the value of the homestead exceeds the amount of the homestead exemption. En. March 21, 1872.

Cal. Rep. Cit. 79, 461; 144, 663.

§ 1247. Same. The petition must be filed with the clerk of the superior court. En. March 21, 1872. Am'd. 1880, 8.

Cal. Rep. Cit. 144, 663.

§ 1248. Same. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing. En. March 21, 1872.

Cal. Rep. Cit. 144, 663; 145, 533.

§ 1249. Same. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead. En. March 21, 1872.

Cal. Rep. Cit. 85, 74; 144, 663; 145, 553.

§ 1250. Same. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same. En. March 21, 1872.

Cal. Rep. Cit. 144, 663.

§ 1251. Same. They must view the premises and appraise the value thereof, and if the appraised value ex-

ceeds the homestead exemption they must determine whether the land claimed can be divided wtihout material injury. En. March 21, 1872.
Cal. Rep. Cit. 79, 610; 144, 663.

§ 1252. Same. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed. En. March 21, 1872.
Cal. Rep. Cit. 144, 663.

§ 1253. Same. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land. En. March 21, 1872.
Cal. Rep. Cit. 52, 630; 75, 165; 79, 610; 144, 663.

§ 1254. Same. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution. En. March 21, 1872.
Cal. Rep. Cit. 79, 461; 144, 663; 146, 744.

§ 1255. Same. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption. En. March 21, 1872.
Cal. Rep. Cit. 144, 663.

§ 1256. Same. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution. En. March 21, 1872.
Cal. Rep. Cit. 85, 74; 144, 663.

§ 1257. After sale, money equal to homestead exemption protected. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband which the law gives to the homestead. En. March 21, 1872. Am'd. 1873-4, 230.
Cal. Rep. Cit. 144, 663.

§ 1258. Compensation of appraisers. The court must fix the compensation of the appraisers, not to exceed five

dollars per day each for the time actually engaged. En. March 21, 1872.

Cal. Rep. Cit. 144, 663; 146, 740.

§ 1259. Costs. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections 1253 and 1254 the amount so paid must be added as costs on execution, and collected accordingly. En. March 21, 1872.

Cal. Rep. Cit. 62, 138; 82, 230; 144, 663.

§ 1260. Who may select homestead, value of. Homesteads may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family;

2. Of not exceeding one thousand dollars in value by any other person. En. March 21, 1872.

Cal. Rep. Cit. 62, 135; 62, 136; 62, 137; 62, 138; 76, 644; 85, 74; 86, 141, 108, 219; 121, 585; 126, 528; 146, 429.

Estimate of value: See sec. 1263, infra.

Place of recording: See sec. 1265, infra.

§ 1261. Head of family defined. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either: (1) his or her minor child, or minor grandchild, or the minor child or his or her deceased wife or husband; (2) a minor brother or sister, or the minor child of a deceased brother or sister.

3. A father, mother, grandfather, or grandmother.

4. The father, mother, grandfather, or grandmother of a deceased husband or wife.

5. An unmarried sister, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves. En. March 21, 1872. Am'd. 1873-4, 230; 1893, 123.

Cal. Rep. Cit. 108, 219; 146, 743. Subd. 2—86, 141. Subd. 3—86, 138. Subd. 6—118, 301; 121, 585.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

§ 1262. Mode of selection.
§ 1263. Declaration of homestead must contain what.
§ 1264. Declaration must be recorded.
§ 1265. Tenure by which homestead is held.

§ 1262. Mode of selection. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. En. March 21, 1872. Am'd. 1873-4, 230.

Cal. Rep. Cit. 62, 135; 62, 137; 62, 138; 66, 458; 76, 529; 76, 644; 79, 205; 98, 148; 108, 219; 110, 203; 121, 585; 126, 528.

Declaration of homestead: See next section.
Selection by wife: See ante, secs. 1238, 1239.
Place of recording: See sec. 1264, infra.

§ 1263. Declaration of homestead must contain what. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family, and, if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value. En. March 21, 1872. Am'd. 1873-4, 231; 1905, 604.

The change consists in the insertion of the words "and if the claimant is married the name of the spouse," after "family."—Code Commissioner's Note.

Cal. Rep. Cit. 52, 635; 54, 618; 54, 620; 55, 136; 56, 527; 62, 135; 62, 136; 62, 137; 62, 138; 65, 343; 66, 458; 69, 198; 71, 303; 71, 304; 76, 525; 76, 644; 79, 204; 82, 228; 83, 30; 92, 4; 98, 148; 108, 219; 110, 203; 121, 585; 122, 113. Subd. 1—126, 528. Subd. 2—141, 500. Subd. 3—141, 500.

Head of a family: See ante, sec. 1261.
Residence necessary: See sec. 1237.

§ 1264. Declaration must be recorded. The declaration must be recorded in the office of the recorder of the county in which the land is situated. En. March 21, 1872.

Cal. Rep. Cit. 98, 148; 110, 203.

Duty of recorder: See Pol. Code, sec. 4235.

§ 1265. Tenure by which homestead is held. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title. En. March 21, 1872. Am'd. 1873-4, 231; 1880, 8.

Cal. Rep. Cit. 50, 543; 52, 296; 52, 297; 52, 298; 54, 501; 64, 398; 76, 531; 76, 644; 78, 312; 78, 474; 79, 205; 81, 219; 81, 243; 82, 10; 83, 442; 85, 74; 85, 621; 86, 120; 86, 138; 86, 153; 92, 371; 92, 519; 98, 148; 98, 478; 100, 451; 102, 341; 108, 654; 111, 483; 113, 30; 118, 300; 118, 301; 121, 269; 121, 653; 132, 611; 139, 72; 139, 151; 144, 147.

Descent of homestead: See Code Civ. Proc., secs. 1474, 1475.

Property exempt from execution to be set apart for family: Code Civ. Proc., secs. 1465-1470.

Homestead set apart by probate court: Code Civ. Proc., secs. 1474 et seq.

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

§ 1266. Mode of selection.
§ 1267. Declaration of homestead.
§ 1268. Declaration must be recorded.
§ 1269. Effect of filing for record the declaration of homestead.

§ 1266. Mode of selection. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "declaration of homestead." En. March 21, 1872.

Cal. Rep. Cit. 86, 141.

§ 1267. Declaration of homestead. The declaration must contain everything required by the second, third, and fourth subdivisions of section 1263. En. March 21, 1872.

§ 1268. Declaration must be recorded. The declaration must be recorded in the office of the county recorder of the county in which the land is situated. En. March 21, 1872.

Duty of recorder: See Pol. Code, sec. 4235.

§ 1269. Effect of filing for record the declaration of homestead. From and after the time the declaration is filed for record, the land described therein is a homestead. En. March 21, 1872.

Cal. Rep. Cit. 82, 228; 86, 141.

CHAPTER IV.

Chapter added March 22, 1905. Stats. 1905, 725.

ALIENATION OF HOMESTEADS OF INSANE PERSONS.

§ 1269a. Petition for sale or mortgage of homestead where husband or wife is insane.
§ 1269b. Notice of application for order.
§ 1269c. Which an order may be made to sell or mortgage the homestead of an insane person.

§ 1269a. Petition for sale or mortgage of homestead where husband or wife is insane. In case of a homestead, if either the husband or wife becomes hopelessly insane, the husband or wife not insane may petition the superior court of the county in which such homestead is situated for an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead to raise moneys to satisfy a lien or charge thereon, or to provide for the support and care either of the sane or insane spouse, or of their minor children. Such petition must be subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children, if any, of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts, in addition to that of the insanity of the husband or wife, relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition. En. Stats. 1905, 725.

The statute of 1873-4, page 582, relating to homesteads belonging to insane persons, is codified in the above sections, which are placed in a new chapter, entitled "Alienation of Homesteads of Insane Persons." Code Commissioner's Note.

§ 1269b. Notice of application for order. Notice of the application for such order must be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there is a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice must also be personally served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there is no such male relative known to the applicant, a copy of such notice must be so served upon the public administrator of the county in which such homestead is situated; and in such case it is the duty of such public administrator to appear and represent the interests of such insane person. For all such services rendered by the public administrator he must be allowed a reasonable fee, to be fixed by the court, and the same must be taxed as costs against the person making application for the order herein provided for. En. Stats. 1905, 726.

See note to § 1269a, ante.

§ 1269c. When an order may be made to sell or mortgage the homestead of an insane person. If it appears to the court that such husband or wife is hopelessly insane, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead, and thereafter any sale, conveyance, or mortgage made in pursuance of such order is as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage. If a sale is ordered it must be reported to and confirmed by the court. Such husband or wife must, before executing any mortgage or conveyance, give a bond, to be approved by the judge of the court, in double the amount of the mortgage, or double the value of the property to be sold, conditioned to account for the proceeds of the mortgage or sale and to apply such proceeds only as the court may direct. En. Stats. 1905, 726.

See note to § 1269a, ante.

TITLE VI.

WILLS.

Chapter I. Execution and Revocation of Wills, §§ 1270-1313.
II. Interpretation of Wills, §§ 1317-1351
III. General Provisions Relating to Wills, §§ 1357-1377.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

§ 1270. Who may make a will.
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§ 1283. Witness who is a devisee, and who would be entitled to share of testator's estate if no will, entitled to share to amount of devise.
§ 1284. Will made out of this state. (Repealed.)
§ 1285. Will made out of state.
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§ 1290. Proof of nuncupative wills.
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§ 1292. Written will, how revoked.
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§ 1306. Afterborn child, unprovided for, to succeed.
§ 1307. Children or issue of children of testator unprovided for by his will.
§ 1308. Share of afterborn child, out of what part of estate to be paid.
§ 1309. Advancement during lifetime of testator.
§ 1310. Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.
§ 1311. Devises of land, how construed.
§ 1312. Will to pass rights acquired after the making thereof.
§ 1313. Restriction on devise for charitable uses.

§ 1270. Who may make a will. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title VII of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 58, 516; 140, 289.

Wills of married women: See sec. 1273.

Wills of unmarried women revoked by marriage: Sec. 1300, infra.

Validity of will: See sections on execution of wills, secs. 1276, 1376.

§ 1271. Monomaniac incompetent. (Repealed.) En. March 21, 1872. Rep. 1873-4, 232.

§ 1272. Will, or part thereof, procured by fraud. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void. En. March 21, 1872.

Contest of will: See Code Civ. Proc., sec. 1312.

Undue influence as affecting contracts: See post, sec. 1575.

Revocation of will: Post, sec. 1292.

Contesting probate of will: Code Civ. Proc., secs. 1312 et seq.; after probate: Code Civ. Proc., secs. 1327, et seq.

§ 1273. Will of married women. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. En. March 21, 1872. Am'd. 1873-4, 232.

Cal. Rep. Cit. 70, 142.

§ 1274. What may pass by will. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 1401 and 1402. En. March 21, 1872.

Cal. Rep. Cit. 112, 395.

§ 1275. Who may take by will. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely edu-

cational or hospital purposes, cannot take under a will, unless expressly authorized by statute; subject, however, to the provisions of section thirteen hundred and thirteen. En. March 21, 1872. Am'd. 1873-4, 275; 1903, 258; 1905, 605.

The change consists in the insertion of the word "that" before "corporation," and in the insertion of the words "counties, municipal corporations and corporations" after "that." The amendment in substance incorporates into the section the provisions of the act of 1881, page 2, authorizing the several counties, cities and counties, cities and towns, of the state, to receive property by gift, bequest and devise.—Code Commissioner's Note.

Cal. Rep. Cit. 59, 131; 60, 309; 63, 621; 123, 624.

Charitable uses, validity of: See post, secs. 1313 et seq., ante, sec. 847.

§ 1276. Written will, how to be executed. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign the same as a witness, at the end of the will, at the testator's request, and in his presence. En. March 21, 1872. Am'd. 1905, 605.

The change consists in the substitution of the words "the same" in place of "his name" after "sign." The purpose of the amendment is to avoid the strict construction given to subdivision 4 in Estate of Walker, 110 Cal. 387.—Code Commissioner's Note.

Cal. Rep. Cit. 54, 517; 68, 519; 96, 600; 107, 6; 110, 390; 142, 375; 145, 409; 146, 460; 146, 461; 146, 465.

See sec. 1278, infra.

Olographic will: See sec. 1277, infra.

Conjoint or mutual will: See sec. 1279, infra.

Nuncupative will: See secs. 1288-1291.

Execution of foreign will: See post, sec. 1285.

§ 1277. Definition of an olographic will. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other

form, and may be made in or out of this state, and need not be witnessed. En. March 21, 1872.

Cal. Rep. Cit. 58, 532; 61, 475; 64, 427; 70, 143; 100, 207; 112, 519; 135, 29; 145, 83; 145, 409.

May be proven in same manner as other private writings: Code Civ. Proc., sec. 1309.

§ 1278. Witness to add residence. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. En. March 21, 1872.

Cal. Rep. Cit. 54, 518.

§ 1279. Mutual will. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will. En. March 21, 1872.

§ 1280. Competency of subscribing witness. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. En. March 21, 1872.

§ 1281. Conditional will. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition. En. March 21, 1872.

Conditional devises and bequests: See post, secs. 1345 et seq.

§ 1282. Gifts to subscribing witnesses void. Creditors competent witnesses. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will. En. March 21, 1872.

Cal. Rep. Cit. 120, 315.

§ 1283. Witness who is a devisee, and who would be entitled to share of testator's estate if no will, entitled to share to amount of devise. If a witness, to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the

estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them. En. March 21, 1872. Am'd. 1873-4, 232.

§ 1284. Will made out of this state. (Repealed.) En. March 21, 1872. Rep. 1873-4, 232.

§ 1285. Will made out of state. No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter, except that a will made in a state or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of such state or country, is valid in this state so far as the same relates to personal property, subject, however, to the provisions of section thirteen hundred and thirteen. En. March 21, 1872. Am'd. 1873-4, 232; 1905, 606.

The change consists in the insertion of all the matter after the word "chapter," the purpose being merely to state what has always been understood to be the rule in this state respecting bequests of personal property, viz.: that it may be bequeathed in accordance with the law of the testator's domicile.—Code Commissioner's Note.

Probate of foreign wills: Code Civ. Proc., sec. 1322.

§ 1286. Subsequent change of domicile. (Repealed.) En. March 21, 1872. Rep. 1873-4, 232.

§ 1287. Republication by codicil. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. En. March 21, 1872.

Cal. Rep. Cit. 94, 673; 138, 434; 138, 435; 138, 436; 138, 438.

§ 1288. Nuncupative will, how to be executed. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. En. March 21, 1872.

How admitted to probate: Code Civ. Proc., sec. 1344.
Probating nuncupative wills: See secs. 1290, 1291, infra.

§ 1289. Requisites of a valid nuncupative will. To make a nucupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day. En. March 21, 1872. Am'd. 1873-4, 233.

§ 1290. Proof of nuncupative wills. No proof must be received of any nuncupative will unless it is offered within six months after speaking the testamentary words, nor unless the words or the substance thereof, were reduced to writing within thirty days after they were spoken. En. March 21, 1872.

Probate of nuncupative will: See Code Civ. Proc., sec. 1344.

§ 1291. Probate of nuncupative wills. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamenary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper: En. March 21, 1872.

Time of probate: See Code Civ. Proc., sec. 1345.

§ 1292. Written will, how revoked. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction. En. March 21, 1872.

Cal. Rep. Cit. 50, 601; 101, 614; 107, 5; 107, 6; 108, 690; 122, 229; 138, 436.

§ 1293. Evidence of revocation. When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses. En. March 21, 1872.

§ 1294. Revocation by obliteration on face of will. (Repealed.) En. March 21, 1872. Rep. 1873-4, 233.

§ 1295. Revocation of duplicate. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates. En. March 21, 1872.

§ 1296. Revocation by subsequent will. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. En. March 21, 1872.

Cal. Rep. Cit. 104, 568.

§ 1297. Antecedent not revived by revocation of subsequent will. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished. En. March 21, 1872.

Cal. Rep. Cit. 108, 690.

§ 1298. Revocation by marriage and birth of issue. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received. En. March 21, 1872.

Cal. Rep. Cit. 65, 52; 107, 7.

§ 1299. Effect of marriage of a man on his will. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has

been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received. En. March 21, 1872.

Cal. Rep. Cit. 65, 52; 87, 647; 87, 648; 107, 7.

§ 1300. Effect of a marriage of a woman on her will. A will, executed by a woman, is revoked by her subsequent marriage, and is not revived by the death of her husband. En. March 21, 1872.

Cal. Rep. Cit. 107, 5; 107, 7.

§ 1301. Contract of sale not a revocation. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession. En. March 21, 1872.

§ 1302. Mortgage not a revocation of will. A change or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance. En. March 21, 1872.

§ 1303. Conveyance, when not a revocation. A conveyance, settlement or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession. En. March 21, 1872.

See post, secs. 1304, 1310.

Ademption of legacies: See post, sec. 1357.

§ 1304. When it is a revocation. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the

testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect. En. March 21, 1872.

§ 1305. Revocation of codicils. The revocation of a will revokes all its codicils. En. March 21, 1872.

§ 1306. Afterborn child, unprovided for, to succeed. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. En. March 21, 1872. Am'd. 1905, 606.

The change consists in the addition of the last sentence, and is intended to change the rule of Smith v. Olmstead, 83 Cal. 582.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 490; 88, 585; 113, 376; 145, 120.

§ 1307. Children or issue of children of testator unprovided for by his will. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. En. March 21, 1872. Am'd. 1905, 606.

The change consists in the addition of the last sentence. (See note to preceding section.)—Code Commissioner's Note.

Cal. Rep. Cit. 57, 489; 57, 491; 81, 575; 83, 328; 86, 443; 88, 585; 99, 647; 107, 616; 119, 573; 140, 289; 140, 291; 140, 292; 140, 470.

§ 1308. Share of afterborn child, out of what part of estate to be paid. When any share of the estate of a

testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted. En. March 21, 1872.

Cal. Rep. Cit. 140, 292; 145, 121; 145, 122.

§ 1309. Advancement during lifetime of testator. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections. En. March 21, 1872.

Advancements, question of, when raised: See Code Civ. Proc., sec. 1686.

Advancements in cases of intestacy: See secs. 1395-1399.

§ 1310. Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants. When any estate is devised or bequeathed to any child, or other relation of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee or legatee would have done had he survived the testator. En. March 21, 1872. Am'd. 1905, 150.

The provisions of this section are new, and are limited to cases where a conviction for murder in the first degree has been had.—Code Commissioner's Note.

The code commissioner probably intended this note to be to § 1409. See post, § 1409.

Cal. Rep. Cit. 139, 89; 140, 289; 140, 290; 140, 291.

"By right of representation" defined: Post, sec. 1403.

Death of legatee—Legacy fails, when: See secs. 1343, 1344.

§ 1311. Devises of land, how construed. Every devise of land in any will conveys all the estate of the devisor

therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate. En. March 21, 1872.

Cal. Rep. Cit. 147, 242.
See ante, sec. 1303.

§ 1312. Will to pass rights acquired after the making thereof. Any estate, right, or interest, in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled, to devise at the time of his decease. En. March 21, 1872. Am'd. 1873-4, 233.

Testamentary dispositions vest at testator's death: Post, sec. 1341.

§ 1313. Restriction on devise for charitable uses. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; provided, that no such devises or bequests shall collectively exceed one-third of the estate of the testator leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law. En. Stats. 1873-4, 275.

Cal. Rep. Cit. 58, 470; 58, 484; 58 485; 58, 511; 58, 514; 58, 516; 58, 517; 63, 622; 94, 378; 94, 379; 98, 606; 98, 611; 105, 647; 123, 624; 126, 301; 127, 96; 128, 12; 138, 434; 138, 436; 138, 547; 138, 548; 138, 550; 138, 557.

Charitable uses permitted by the codes: See ante, secs. 847 et seq.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

§ 1317. Testator's intention to be carried out.
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§ 1348. Conditions precedent, when deemed performed.
§ 1349. Condition subsequent, what.
§ 1350. Devisees, etc., take as tenants in common.
§ 1351. Advancements, when ademptions.

§ 1317. Testator's intention to be carried out. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible. En. March 21, 1872.

Cal. Rep. Cit. 58, 404; 74, 368; 99, 648; 123, 625; 128, 11; 132, 566; 132, 567; 135, 29; 136, 83; 138, 436; 139, 686; 142, 375.

Construction of will made before the code went into effect not affected by the code: Post, sec. 1375.

Construction of foreign will: Post, sec. 1376.

Declarations of testator as evidence: See next section.

§ 1318. Intention to be ascertained from the will. In case of uncertainty arising upon the face of a will, as to

the application of any of its provisions, the testator's intention is to be ascertained from the words of the will taking into view the circumstances under which it was made exclusive of his oral declarations. En. March 21, 1872.

Cal. Rep. Cit. 58, 404; 81, 243; 107, 308; 108, 659; 123, 341; 123, 342; 129, 453; 129, 454; 132, 176; 132, 669; 141, 299; 142, 375; 143, 456; 145, 123.

§ 1319. Rules of interpretation. In interpreting a will, subject to the law of this state, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears. En. March 21, 1872.

Cal. Rep. Cit. 139, 89.

§ 1320. Several instruments are to be taken together. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument. En. March 21, 1872.

Cal. Rep. Cit. 104, 568.

§ 1321. Harmonizing various parts. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail. En. March 21, 1872.

Cal. Rep. Cit. 58, 404; 94, 674; 132, 668; 138, 435.

§ 1322. In what case devise not affected. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will. En. March 21, 1872.

Cal. Rep. Cit. 73, 103; 127, 97; 132, 672; 142, 7.
Intention of testator: See secs. 1317 et seq.

§ 1323. When ambiguous or doubtful. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will. En. March 21, 1872.

§ 1324. Words taken in ordinary sense. The words of a will are to be taken in their ordinary and grammatical

sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained En. March 21, 1872.

Cal. Rep. Cit. 58, 404; 74, 368; 123, 143; 132, 671; 141, 300.

§ 1325. Words to receive an operative construction. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative. En. March 21, 1872.

Cal. Rep. Cit. 58, 404; 99, 648; 132, 177; 142, 375.

See ante, sec. 1321.

§ 1326. Intestacy to be avoided. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy. En. March 21, 1872.

Cal. Rep. Cit. 104, 568; 123, 143; 123, 343; 132, 566; 139, 686; 142, 375; 145, 86; 147, 153.

§ 1327. Effect of technical words. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with such technical sense. En. March 21, 1872. Am'd. 1905, 606.

The change consists in the addition of the clause following the word "intention," and provides that the words in a will need not be taken in a technical sense, if it appears to have been drawn by the testator, and that he was unacquainted with such sense.—Code Commissioner's Note.

Cal. Rep. Cit. 74, 368.

§ 1328. Technical words not necessary. Technical words are not necessary to give effect to any species of disposition by a will. En. March 21, 1872.

§ 1329. Certain words not necessary to pass a fee. The term "heirs" or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited. En. March 21, 1872.

Cal. Rep. Cit. 138, 440.

Words of succession not necessary to transfer a fee: See ante, sec. 1072.

§ 1330. Power to devise, how executed by terms of will. Real or personal property embraced in a power to devise

passes by a will purporting to devise all the real or personal property of the testator. En. March 21, 1872.
Cal. Rep. Cit. 107, 598; 132, 558; 145, 346.

§ 1331. Devise or bequest of all real or all personal property, or both. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death. En. March 21, 1872.
Cal. Rep. Cit. 81, 242.
See ante, secs. 1303, 1311, 1312.
General and specific legacies: See post, sec. 1357.

§ 1332. Residuary clause. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. En March 21, 1872. Am'd. 1873-4, 234.
Cal. Rep. Cit. 107, 416; 127, 92; 142, 7; 147, 152.

§ 1333. Same. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will. En. March 21, 1872. Am'd. 1873-4, 234.
Cal. Rep. Cit. 107, 416; 127, 92; 142, 6; 142, 7.

§ 1334. "Heirs," "relatives," "issue," "descendants," etc. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession in this code. En. March 21, 1872.

§ 1335. Words of donation and of limitation. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person. En. March 21, 1872.
Rule of Shelley's case not adopted in this state: See ante, sec. 779.

§ 1336. To what time words refer. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession. En. March 21, 1872.

Cal. Rep. Cit. 114, 190.

§ 1337. Devise or bequest to a class. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed. En. March 21, 1872.

Cal. Rep. Cit. 79, 615; 119, 410; 132, 578.

Posthumous children: See infra, sec. 1339.

§ 1338. When conversion takes effect. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death. En. March 21, 1872.

Cal. Rep. Cit. 111, 638; 143, 270; 144, 127.

§ 1339. When child born after testator's death takes under will. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class. En. March 21, 1872.

Cal. Rep. Cit. 132, 580.

Child en ventre sa mere: See ante, sec. 29.

§ 1340. Mistakes and omissions. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received. En. March 21, 1872.

Cal. Rep. Cit. 108, 659; 119, 575; 123, 341; 127, 94; 142, 374; 142, 376.

§ 1341. When devises and bequests vest. Testamentary dispositions, including devises and bequests to a per-

son on attaining majority, are presumed to vest at the testator's death. En. March 21, 1872.

Cal. Rep. Cit. 73, 102; 122, 627; 132, 578; 137, 355.

§ 1342. When cannot be divested. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose. En. March 21, 1872.

§ 1343. Death of devisee or legatee. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section thirteen hundred and ten. En. March 21, 1872. Am'd. 1873-4, 234.

Cal. Rep. Cit. 98, 606; 134, 324; 139, 89; 140, 290.

§ 1344. Interests in remainder are not affected. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator. En. March 21, 1872.

§ 1345. Conditional devises and bequests. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. En. March 21, 1872.

Conditions of ownership: See ante, secs. 707 et seq.

Conditional obligations: See post, secs. 1434 et seq.

§ 1346. Condition precedent, what. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. En. March 21, 1872.

§ 1347. Effect of condition precedent. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will. En. March 21, 1872.

§ 1348. Conditions precedent, when deemed performed. A condition precedent in a will is to be deemed performed

when the testator's intention has been substantially, though not literally, complied with. En. March 21, 1872.

§ 1349. Condition subsequent, what. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event. En. March 21, 1872.
Cal. Rep. Cit. 98, 381.

§ 1350. Devisees, etc., take as tenants in common. A devise or legacy given to more than one person vests in them as owners in common. En. March 21, 1872.
Cal. Rep. Cit. 141, 434.

§ 1351. Advancements, when ademptions. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing. En. March 21, 1872.
Advancement in cases of intestacy: See post, secs. 1395-1399.

CHAPTER III.

GENERAL PROVISIONS RELATING TO WILLS.

§ 1357. Nature and designations of legacies.
1. Specific.
2. Demonstrative.
3. Annuities.
4. Residuary.
5. General.
§ 1358. Estate chargeable in case of intestacy.
§ 1359. Order of resort to estate for debts.
§ 1360. Same for legacies.
§ 1361. Legacies, how charged with debts.
§ 1362. Abatement.
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§ 1370. Construction of these rules.
§ 1371. Executor according to the tenor.
§ 1372. Power given executor to appoint is invalid.
§ 1373. Executor not to act till qualified.
§ 1374. Provisions as to revocations.
§ 1375. Execution and construction of prior wills not affected.
§ 1376. Law governing interpretation.
§ 1377. Liability of beneficiaries for testator's obligations.

§ 1357. Nature and designations of legacies. Legacies are distinguished and designated, according to their nature, as follows:

1. **Specific.** A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator;

2. **Demonstrative.** A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy;

3. **Annuities.** An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy;

4. **Residuary.** A residuary legacy embraces only that which remains after all the bequests of the will are discharged;

5. **General.** All other legacies are general legacies. En. March 21, 1872.

Cal. Rep. Cit. 66, 331; 66, 332; 66, 439; 66, 440; 107, 308; 112, 526; 145, 121. Subd. 2—66, 437. Subd. 3—119, 136; 143, 453.

Annuities commence at the testator's death: Post, sec. 1368.

General legacies, payable when: See post, sec. 1368.

§ 1358. Estate chargeable in case of intestacy. When a person dies intestate all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure. En. March 21, 1872. Am'd. 1873-4, 234.

Cal. Rep. Cit. 66, 439; 67, 639.

All property chargeable with debts: Code Civ. Proc., sec. 1516.

Debts to be paid from what: Code Civ. Proc., sec. 1516; secs. 1560, 1562 et seq. of the same; sec. 1359, infra.

Order of payment of debts: Code Civ. Proc., sec. 1643.

Provision for support of the family: Code Civ. Proc., secs. 1464 et seq.

§ 1359. Order of resort to estate for debts. The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts;

2. Property not disposed of by the will;

3. Property which is devised or bequeathed to a residuary legatee;

4. Property which is not specifically devised or bequeathed and

5. All other property ratably. Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for. En. March 21, 1872. Am'd. 1873-4, 234.

Cal. Rep. Cit. 66, 439; 66, 440, 145, 509. Subd. 4—66, 331.

§ 1360. Same for legacies. The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed. En. March 21, 1872. Am'd. 1873-4, 235.

Cal. Rep. Cit. 66, 332; 66, 439; 66, 440; 142, 456. Subd. 4—66, 331.

Payment of legacies—When legacies are due: Post, sec. 1368. When may be paid: Code Civ. Proc., secs. 1658 et seq.

Legacies liable for debts: See Code Civ. Proc., secs. 1563 et seq.

§ 1361. Legacies, how charged with debts. Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator. En. March 21, 1872.

Cal. Rep. Cit. 66, 438; 66, 439; 66, 441.

§ 1362. Abatement. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will. En. March 21, 1872.

Cal. Rep. Cit. 66, 331; 66, 437; 66, 439; 66, 440.

§ 1363. Specific devises and legacies. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative;

and he may be authorized by the superior court to sell the property devised and bequeathed, in the cases herein provided. En. March 21, 1872. Am'd. 1880, 8.

How title passes in cases of intestacy: See post, sec. 1386.

§ 1364. Heir's conveyance good, unless will is proved within four years. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless within four years after the devisor's death, the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the superior court having jurisdiction thereof, or written notice of such devise is filed with the clerk of the county where the real property is situated. En. March 21, 1872. Am'd. 1880, 8; 1905, 606.

The change consists in the transposition of the words "within four years after the devisor's death," by striking them out at the end of the section, where they now appear, and placing them after the word "unless."—Code Commissioner's Note.

Recording will: See Code Civ. Proc., secs. 1314, 1318.

§ 1365. Possession of legatees. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be. En. March 21, 1872.

Cal. Rep. Cit. 108, 470.

§ 1366. Bequest of interest. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death. En. March 21, 1872.

Cal. Rep. Cit. 143, 454.

Annuities commence at testator's death: Sec. 1368, infra.

Accumulations: See ante, secs. 722 et seq.

§ 1367. Satisfaction. A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death. En. March 21, 1872. Am'd. 1873-4, 235.

§ 1368. Legacies, when due. Legacies are due and deliverable at the expiration of one year after the testa-

tor's decease. Annuities commence at the testator's decease. En. March 21, 1872.

Cal. Rep. Cit. 50, 246; 107, 309; 112, 524; 112, 527; 119, 135; 143, 456.

Legacies payable after four months: See Code Civ. Proc., sec. 1658.

§ 1369. Interest. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease. En. March 21, 1872.

Cal. Rep. Cit. 50, 247; 107, 309; 112, 524; 112, 527; 137, 431; 143, 454; 143, 456; 143, 457.

§ 1370. Construction of these rules. The four preceding sections are in all cases to be controlled by a testator's express intention. En. March 21, 1872.

Cal. Rep. Cit. 112, 524.

§ 1371. Executor according to the tenor. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor. En. March 21, 1872.

Cal. Rep. Cit. 101, 386; 107, 591; 124, 47.

Appointment of executors: See Code Civ. Proc., secs. 1353, 1365.

§ 1372. Power given executor to appoint is invalid. An authority to an executor to appoint an executor is void. En. March 21, 1872.

Executor of executor: See Code Civ. Proc., sec. 1353.

§ 1373. Executor not to act till qualified. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate. En. March 21, 1872.

Qualification: See Code Civ. Proc., sec. 1349.

Qualification of executor: See Code Civ. Proc., secs. 1350, 1353, 1365 et seq.

Payment of debts: See supra, sec. 1359.

§ 1374. Provisions as to revocations. The provisions of this title in relation to the revocation of wills apply to all

wills made by any testator living at the expiration of one year from the time it takes effect. En. March 21, 1872.

§ 1375. Execution and construction of prior wills not affected. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will. En. March 21, 1872.

§ 1376. Law governing interpretation. The validity and interpretation of wills, wherever made, are governed, when relating to property within this state, by the law of this state, except as provided in section twelve hundred and eighty-five. En. March 21, 1872. Am'd. 1873-4, 235; 1905, 607.

The change consists in the addition of the clause following the word "state," and has been rendered necessary by the proposed amendment to section 1285.—Code Commissioner's Note.

§ 1377. Liability of beneficiaries for testator's obligations. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 140, 289.

TITLE VII.

SUCCESSION.

§ 1383. Succession defined.
§ 1384. Intestate's estate, to whom passes.
§ 1385. Personal representatives. (Repealed.)
§ 1386. Succession to and distribution of property.
§ 1387. Illegitimate children to inherit in certain events.
§ 1388. Successor to illegitimate child.
§§ 1389-1393. Degrees of kindred, how computed.
§ 1394. Relatives of the half blood.
§ 1395. Advancements constitute part of distributive share.
§ 1396. Advancements, when too much, or not enough.
§ 1397. What are advancements.
§ 1398. Value of advancements, how determined.
§ 1399. When heir, advanced to, dies before decedent.
§ 1400. Inheritance of husband and wife from each other.
§ 1401. Distribution of the common property on death of wife.
§ 1402. Distribution of common property on death of husband.
§ 1403. Inheritance by representation.
§ 1404. Aliens may inherit, when, and how.
§ 1405. Succession not claimed, attorney general to cause to be sold, and proceeds deposited with state treasurer.
§ 1406. When the property and estate escheat to the state.
§ 1407. Property escheated subject to charges as other property.
§ 1408. Successor liable for decedent's obligations.
§ 1409. Person convicted of murder of decedent not to succeed.

§ 1383. Succession defined. Succession is the coming in of another to take the property of one who dies without disposing of it by will. En. March 21, 1872.

Cal. Rep. Cit. 52, 298; 88, 586; 112, 394; 112, 399; 132, 612; 136, 112; 143, 198.

§ 1384. Intestate's estate, to whom passes. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration. En. March 21, 1872. Am'd. 1873-4, 236.

Cal. Rep. Cit. 86, 527; 88, 586; 88, 588; 100, 164; 105, 183; 109, 422; 114, 528; 123, 687; 137, 174; 143, 198.

Possession of personal representative: See Code Civ. Proc., secs. 1452, 1581.

§ 1385. Personal representatives. (Repealed.) En. March 21, 1872. Rep. 1873-4, 236.

§1386 Am'd.

§ 1386. Succession to and distribution of property. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased chil-

dren, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father nor mother, then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the decedent is a widow or widower, and leaves no issue, and the estate or any portion thereof was common

property of such decedent and his or her deceased spouse, while such spouse was living, or was separate property of his or her deceased spouse, while such spouse was living, such property goes to the children of such deceased spouse and the descendants thereof, and if none, then to the father of such deceased spouse, or if he is dead, to the mother. If there is no father nor mother, then such property goes to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse by right of representation;

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools. En. March 21, 1872. Am'd. 1873-4, 236; 1880, 14; 1905, 607.

A clerical error is corrected by renumbering the subdivisions; certain errors of grammar are corrected. The words "or grandchild" are inserted after "child"; the words "nor the child or grandchild of a deceased brother or sister" are inserted after "sister"; the words "children of such deceased spouse and the descendants thereof, and if none, then to," are inserted. In the second line of subdivision 8, the word "issue" is substituted for "kindred," and the subdivision amended in accordance with the urgent request of Judge Gray of the Supreme Court Commission to overcome such cases as Estate of McCauley, 138 Cal. 546.—Code Commissioner's Note.

Cal. Rep. Cit. 63, 416; 75, 219; 76, 531; 81, 438; 84, 495; 88, 586; 110, 526; 110, 527; 123, 687; 123, 688; 131, 434; 131, 435; 132, 217; 132, 613; 136, 112; 138, 548; 138, 549; 138, 550; 138, 551; 140, 469; 143, 198; 143, 202; 143, 205; 146, 579; 147, 607. Subd. 1—130, 322. Subd. 2—78, 588; 114, 465; 117, 285; 132, 215. Subd. 3—114, 465; 117, 285; 132, 526. Subd. 5—78, 587; 88, 620; 124, 129; 132, 215; 132, 612. Subd. 6—110, 526. Subd. 9—143, 207. Subd. 10—143, 197.

Administration of intestates' estates: See Code Civ. Proc., secs. 1365 et seq.

§ 1387. **Illegitimate children to inherit in certain events.** Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inherit-

ing any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law or dissolved by divorce, are legitimate. En. March 21, 1872.

Cal. Rep. Cit. 52, 87; 57, 491; 63, 415; 63, 416; 81, 421; 81, 422; 81, 442; 81, 447; 96, 557; 96, 581; 96, 582; 96, 588; 96, 591; 96, 594; 102, 262; 112, 693; 127, 434; 142, 159; 142, 168; 142, 170; 142, 171.

§ 1388. Successor to illegitimate child. The estate of an illegitimate child, who has been legitimated by the subsequent marriage of its parents, or adopted by the father as provided by section two hundred and thirty, and who dies intestate, is succeeded to as if he were born in lawful wedlock. If such child has not been so legitimated or adopted, his estate goes to his lawful issue, or, if he leaves no issue, to his mother, or in case of her decease, to her heirs at law. En. March 21, 1872. Am'd. 1905, 609.

The amendment consists in declaring that if an illegitimate child has been legitimated, his estate on his death is succeeded to as if he were born in wedlock.—Code Commissioner's Note.

Cal. Rep. Cit. 63, 415; 63, 417.

§ 1389. Degrees of kindred, how computed. The degree of kindred is established by the number of generations, and each generation is called a degree. En. March 21, 1872.

§ 1390. Degrees of kindred, how computed. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity. En. March 21, 1872.

§ 1391. Degrees of kindred, how computed. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends. En. March 21, 1872.

§ 1392. Degrees of kindred, how computed. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons. En. March 21, 1872.

§ 1393. Degrees of kindred, how computed. In the collateral line the degrees are counted by generations from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on. En. March 21, 1872.

Cal. Rep. Cit. 105, 557; 105, 558.

§ 1394. Relatives of the half blood. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance. En. March 21, 1872.

Cal. Rep. Cit. 110, 527; 131, 434; 131, 435; 132, 216; 132, 217.

Kindred of half blood as administrators: See Code Civ. Proc., sec. 1366.

§ 1395. Advancements constitute part of distributive share. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such child, or other heir, toward his share of the estate of the decedent. En. March 21, 1872. Am'd. 1905, 609.

The change consists in the substitution of the words "other heir" for "other lineal descendants," and in the substitution of "heirs" for "issue."—Code Commissioner's Note.

Cal. Rep. Cit. 74, 132.

Advancements: See secs. 1309, 1351, ante.

§ 1396. Advancements, when too much, or not enough. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent. En. March 21, 1872.

§ 1397. What are advancements. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir. En. March 21, 1872.

§ 1398. Value of advancements, how determined. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained. En. March 21, 1872.

§ 1399. When heir advanced to, dies before decedent. If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them. En. March 21, 1872. Am'd. 1905, 609.

The change consists in the substitution of the words "other heir" for "other lineal descendant" before "receiving," and in the substitution of "heirs" for "issue" after "leaving."—Code Commissioner's Note.

Cal. Rep. Cit. 74, 132.

§ 1400. Inheritance of husband and wife from each other. The provisions of the preceding sections of this title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents. En. March 21, 1872.

Cal. Rep. Cit. 112, 394.

§ 1401. Distribution of the common property on death of wife. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband. En. March 21, 1872. Am'd. 1873-4, 238.

Cal. Rep. Cit. 63, 14; 74, 525; 80, 209; 88, 287; 110, 290; 112, 395; 126, 33; 143, 295.

§ 1402. Distribution of common property on death of husband. Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration. En. March 21, 1872.

Cal. Rep. Cit. 77, 314; 81, 242; 81, 243; 88, 586; 88, 588; 100, 163; 100, 164; 106, 612; 112, 395; 112, 399; 113, 688; 117, 515; 120, 92.

Community property defined: Secs. 163, 164, ante.

§ 1403. Inheritance by representation. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents. En. March 21, 1872.

See sec. 1310, ante.

§ 1404. Aliens may inherit, when, and how. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no nonresident foreigner

can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession. En. March 21, 1872.

Cal. Rep. Cit. 129, 90; 143, 140.

Aliens may take by succession: See secs. 671, 672, ante.

Aliens, control of property by: Cal. Const., art. 1, sec. 17.

§ 1405. Succession not claimed, attorney general to cause to be sold and proceeds deposited with state treasurer. When succession is not claimed as provided in the preceding section, the superior court, on information, must direct the attorney general to reduce the property to his possession or that of the state, or to cause it to be sold, and it or its proceeds to be deposited in the state treasury for the benefit of the person entitled thereto, to be paid to him, if, within five years after such deposit, he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto. En. March 21, 1872. Am'd. 1905, 609.

The change consists in the substitution of the words "superior court" for "district court" before "or," and in the substitution of the words "he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto," in place of the words "proof to the satisfaction of the state comptroller and treasurer be produced that he is entitled to succession thereto." The design of the amendment is to require the proof of the right to succession to be made in court instead of vesting the controller and treasurer with power to determine the question.—Code Commissioner's Note.

Cal. Rep. Cit. 76, 297; 76, 298; 129, 90.

§ 1406. When the property and estate escheat to the state. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property must be delivered, or the proceeds paid, to the claimant, on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and must be placed by the state treasurer to the credit of the school fund. En. March 21, 1872. Am'd. 1905, 610.

This section is recast to conform to the proposed amendment to the last section.—Code Commissioner's Note.

Cal. Rep. Cit. 76, 297; 76, 298; 129, 90.

§ 1407. Property escheated subject to charges as other property. Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is

also subject to all the provisions of title VIII, part III, of the Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 76, 297; 76, 298; 76, 299.

Title VIII, part III, Code Civ. Proc.: See secs. 1369-1372.

§ 1408. Successor liable for decedent's obligations. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure. En. March 21, 1872.

§ 1409. Person convicted of murder of decedent not to succeed. No person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under the provisions of this title. En. Stats. 1905, 610.

This is a new section corresponding to section 1314.—Code Commissioner's Note.

See note to § 1310, ante.

TITLE VIII.

WATER RIGHTS.

§ 1410. Rights to water may be acquired by appropriation.
§ 1411. Appropriation must be for a useful purpose.
§ 1412. Point of diversion may be changed.
§ 1413. Water may be turned into natural channels.
§ 1414. First in time, first in right.
§ 1415. Notice of appropriation.
§ 1416. Work on water rights.
§ 1417. Completion defined.
§ 1418. Doctrine of relation applied.
§ 1419. Forfeiture.
§ 1420. Rights of present claimant.
§ 1421. Recorder to keep book in which to record notices.
§ 1422. Title not to affect rights of riparian proprietors.

§ 1410. Rights to water may be acquired by appropriation. The right to the use of running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation. En. March 21, 1872.

Cal. Rep. Cit. 69, 368; 69, 370; 69, 371; 69, 372; 69, 427; 69, 452; 91, 190; 95, 616; 101, 112; 122, 158.

Acts relating to irrigation: See General Laws, title Irrigation.

Rights of appropriators as between themselves: See sec. 1414.

Posting notice: Secs. 1415 et seq.

§ 1411. Appropriation must be for a useful purpose. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases. En. March 21, 1872.

Cal. Rep. Cit. 69, 307; 69, 369; 69, 452; 79, 574; 110, 126; 110, 127; 120, 87.

Appropriation must be evidenced by physical acts: See sec. 1416.

Amount of property appropriated: See sec. 1415.

§ 1412. Point of diversion may be changed. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. En. March 21, 1872.

Cal. Rep. Cit. 69, 369; 69, 452; 96, 217; 98, 340; 106, 665; 106, 668; 108, 81; 117, 183; 117, 184; 134, 555; 138, 721; 138, 722; 147, 410.

Changing point of diversion: See post, sec. 1415.

§ 1413. Water may be turned into natural channels. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished. En. March 21, 1872.

Cal. Rep. Cit. 69, 369; 69, 453; 134, 555.

§ 1414. First in time, first in right. As between appropriators, the one first in time is the first in right. En. March 21, 1872.

Cal. Rep. Cit. 69, 369; 69, 453.

When right begins: See sec. 1418.

Use of water, nature of: See sec. 1411.

Change of use: See sec. 1412.

Rights of appropriators as against the government and its grantees: See sec. 1410.

§ 1415. Notice of appropriation. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purposes for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it.

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

After filing such copy for record, the place of intended diversion or the place of intended use or the means by which it is intended to divert the water, may be changed by the person posting said notice or his assigns, if others are not injured by such change. This provision applies to notices already filed as well as to notices hereafter filed. En. March 21, 1872. Am'd. 1903, 361.

Cal. Rep. Cit. 69, 369; 80, 398; 80, 400; 80, 401; 80, 407; 82, 566; 82, 567; 82, 568; 86, 11; 99, 584; 99, 586; 99, 587; 103, 423.

Change of place of diversion: See ante, sec. 1412.

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§1416 Am'd.

§ 1416. Work on water rights. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, or the survey, road or trail building, necessarily incident thereto, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain; provided, that if the erection of a dam has been recommenced by the California debris commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water. En. March 21, 1872. Am'd. 1895, 70; 1903, 396.

Cal. Rep. Cit. 69, 369; 75, 486; 80, 400; 80, 401; 80, 403; 82, 566; 82, 568; 99, 587.

Time from which right of appropriation becomes vested: See sec. 1418.

§ 1417. Completion defined. By "completion" is meant conducting the waters to the place of intended use. En. March 21, 1872.

Cal. Rep. Cit. 69, 369; 75, 487.

§ 1418. Doctrine of relation applied. By a compliance with the above rules the claimant's right to the use of the

water relates back to the time the notice was posted. En. March 21, 1872.

Cal. Rep. Cit. 69, 370; 80, 401; 80, 407; 80, 408; 82, 569; 99, 586; 99, 587.

§ 1419. Forfeiture. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith. En. March 21, 1872.

Cal. Rep. Cit. 69, 370; 80, 401; 80, 403; 80, 407; 80, 408; 82, 569; 99, 586; 99, 587.

§ 1420. Rights of present claimant. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases. En. March 21, 1872.

Cal. Rep. Cit. 69, 370; 69, 453; 75, 487.

§ 1421. Recorder to keep book in which to record notices. The recorder of each county must keep a book, in which he must record the notices provided for in this title. En. March 21, 1872.

Cal. Rep. Cit. 69, 370.

§ 1422. Time within which to commence work.— If the place of intended diversion or any part of the route of intended conveyance of water so claimed, be within, and a part of, any national park, forest reservation, or other public reservation, and be so shown in the notice of appropriation of said water, then the claimant shall have sixty days, after the grant of authority to occupy and use such park or reservation for such intended purpose, within which to commence the excavation or construction of said works; provided that within sixty days after the posting of said notice of appropriation, as provided in section 1415 of the Civil Code, the claimant shall in good faith commence (and thereafter diligently and continuously, except when temporarily interrupted by snow or rain, prosecute to completion) such surveys and other work as under the regulations governing such park or reservations, may be required as preliminary to, or for use with, an application for such authority; and provided also that the claimant shall in good faith on completion of said survey and pre-

liminary work, apply to the officer, board, or body, having charge of such park or reservation, for such authority, and shall thereafter, prosecute said application with reasonable diligence. En. March 21, 1872. Rep. 1887, 114. En. 1903, 397.

Cal. Rep. Cit. 69, 300; 69, 368; 69, 370; 69, 371; 69, 372; 69, 373; 69, 374; 69, 375; 69, 376; 69, 378; 69, 379; 69, 426; 69, 427; 69, 428; 69, 439; 69, 451; 69, 453; 108, 78.

Acts relating to irrigation: See General Laws, title Irrigation.

TITLE IX.

HYDRAULIC MINING.

§ 1424. Where hydraulic mining can be carried on.
§ 1425. Meaning of hydraulic mining.

§ 1424. Where hydraulic mining can be carried on. The business of hydraulic mining may be carried on within the state of California wherever and whenever the same can be carried on without material injury to the navigable streams, or the lands adjacent thereto. En. Stats. 1893, 337.

§ 1425. Meaning of hydraulic mining. Hydraulic mining, within the meaning of this title, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank. En. Stats. 1893, 337.

Cal. Rep. Cit. 111, 576.

DIVISION THIRD.

Part I. Obligations in General, §§ 1427-1543.

II. Contracts, §§ 1549-1701.

III. Obligations Imposed by Law, §§ 1708-1715.

IV. Obligations Arising from Particular Transactions, §§ 1721-3268.

PART I.

OBLIGATIONS IN GENERAL.

Title I. Definition of Obligations, §§ 1427-1428.
II. Interpretation of Obligations, §§ 1429-1451.
III. Transfer of Obligations, §§ 1457-1467.
IV. Extinction of Obligations, §§ 1473-1543.

TITLE I.

DEFINITION OF OBLIGATIONS.

§ 1427. Obligation, what.
§ 1428. How created and enforced.

§ 1427. Obligation, what. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing. En. March 21, 1872.

Cal. Rep. Cit. 56, 218; 134, 588.

Similar provision: Code Civ. Proc., sec. 26.

§ 1428. How created and enforced. An obligation arises either from:

1. The contract of the parties; or,

2. The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action, or proceeding. En. March 21, 1872. Am'd. 1873-4, 239.

Cal. Rep. Cit. 56, 218; 110, 385; 134, 588.

Obligation defined: Code Civ. Proc., sec. 26.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

Chapter I. General Rules of Interpretation, § 1429.
II. Joint or Several Obligations, §§ 1430-1432.
III. Conditional Obligations, §§ 1434-1442.
IV. Alternative Obligations, §§ 1448-1451.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

§ 1429. General rules.

§ 1429. General rules. The rules which govern the interpretation of contracts are prescribed by part II of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted. En. March 21, 1872.

Interpretation of contracts: See secs. 1635-1661.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

§ 1430. Obligations, joint or several, etc.
§ 1431. When joint.
§ 1432. Contribution between joint parties.

§ 1430. Obligations, joint or several, etc. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several. En. March 21, 1872.

Cal. Rep. Cit. 69, 620; 129, 239; 129, 241; 129 243.

§ 1431. When joint. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary. En. March 21, 1872.

Cal. Rep. Cit. 69, 620; 127, 150; 129, 243; 140, 537.

Promise united in by several, all of whom receive some benefit, is presumed to be joint and several: See post, sec. 1659.

Promise in the singular, but executed by several, is presumed to be joint and several: Post, sec. 1660.

§ 1432. Contribution between joint parties. A party to a joint, or joint and several obligation, who satisfies more

than his share of the claim against all, may require a proportionate contribution from all the parties joined with him. En. March 21, 1872.

Cal. Rep. Cit. 117, 202; 130, 254; 132, 482; 135, 93.

See post, sec. 2848.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

§ 1434. Obligation, when conditional.
§ 1435. Conditions, kinds of.
§ 1436. Conditions precedent.
§ 1437. Conditions concurrent.
§ 1438. Condition subsequent.
§ 1439. Performance, etc., of conditions, when essential.
§ 1440. When performance, etc., excused.
§ 1441. Impossible or unlawful conditions void.
§ 1442. Conditions involving forfeiture, how construed.

§ 1434. Obligation, when conditional. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event. En. March 21, 1872.

§ 1435. Conditions, kinds of. Conditions may be precedent, concurrent or subsequent. En. March 21, 1872.

Conditions of ownership: See ante, secs. 707 et seq.

Conditional legacies: See ante, secs. 1345, 1346.

Conditions precedent: See next section.

Conditions concurrent: See sec. 1437, infra.

Conditions subsequent: See sec. 1438, infra.

§ 1436. Conditions precedent. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. En. March 21, 1872.

Cal. Rep. Cit. 98, 440.

See ante, secs. 707, 708.

Unlawful condition precedent: See ante, sec. 709.

§ 1437. Conditions concurrent. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time. En. March 21, 1872.

Cal. Rep. Cit. 53, 723; 87, 59.

§ 1438. Condition subsequent. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. En. March 21, 1872.

See ante, secs. 707, 708.

§ 1439. Performance, etc., of conditions, when essential. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section. En. March 21, 1872.

Cal. Rep. Cit. 87, 59; 107, 65; 117, 671; 133, 458; 146, 584.

§ 1440. When performance, etc., excused. If a party to an obligation gives notice to another before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party. En. March 21, 1872.

Cal. Rep. Cit. 88, 541; 128, 253; 144, 401.

Refusal to accept performance before the time to perform is equivalent to an offer of performance and refusal: Post, sec. 1515.

§ 1441. Impossible or unlawful conditions void. A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void. En. March 21, 1872.

Object of contracts: See post, secs. 1595 et seq.

Unlawful conditions: See ante, secs. 709 et seq.

Conditions, when impossible, within the meaning of above section: See post, secs. 1596 et seq.

§ 1442. Conditions involving forfeiture, how construed. A condition involving a forfeiture must be strictly inter-

preted against the party for whose benefit it is created. En. March 21, 1872.

Cal. Rep. Cit. 78, 56; 87, 37; 92, 522; 110, 595; 128, 288; 130, 19; 145, 184.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

§ 1448. Who has the right of selection.
§ 1449. Right of selection, how lost.
§ 1450. Alternatives indivisible.
§ 1451. Nullity of one or more of alternative obligations.

§ 1448. Who has the right of selection. If an obligation requires the performance of one or two acts in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation. En. March 21, 1872.

Cal. Rep. Cit. 119, 601.

§ 1449. Right of selection, how lost. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party. En. March 21, 1872.

§ 1450. Alternatives indivisible. The party having the right of selection between alternative acts must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party. En. March 21, 1872.

Cal. Rep. Cit. 82, 50.

§ 1451. Nullity of one or more of alternative obligations. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 123, 243.

TITLE III.

TRANSFER OF OBLIGATIONS.

§ 1457. Burden of obligation not transferable.
§ 1458. Rights arising out of obligation transferable.
§ 1459. Non-negotiable instruments may be transferred.
§ 1460. Covenants running with land, what.
§ 1461. What covenants run with land.
§ 1462. Same.
§ 1463. Same.
§ 1464. What covenants run with land when assigns are named.
§ 1465. Who are bound by covenants.
§ 1466. Who are not.
§ 1467. Apportionment of covenants.
§ 1468. Covenants to run with land.

§ 1457. Burden of obligation not transferable. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 1466. En. March 21, 1872.

Cal. Rep. Cit. 84, 289; 86, 576; 86, 577; 96, 407; 124, 257; 135, 643.

§ 1458. Rights arising out of obligation transferable. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such. En. March 21, 1872.

Cal. Rep. Cit. 84, 283; 84, 288; 144, 260.

Assignment of things in action: See ante, sec. **954.**

§ 1459. Non-negotiable instruments may be transferred. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement. En. March 21, 1872.

Cal. Rep. Cit. 55, 129; 55, 566; 84, 283; 86, 576; 94, 145; 101, 288; 107, 62; 108, 29; 129, 412; 132, 584; 133, 685; 134, 410; 144, 35.

Negotiable instruments, what are: See post, secs. 3087 et seq.

§ 1460. Covenants running with land, what. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the

assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land. En. March 21, 1872.

Cal. Rep. Cit. 80, 118; 80, 534; 80, 538; 119, 294.

Implied covenants: See ante, sec. 1113.

Covenants running with land: See the succeeding sections of this title, especially secs. 1462, 1464.

§ 1461. What covenants run with land. The only covenants which run with the land are those specified in this title, and those which are incidental thereto. En. March 21, 1872.

Cal. Rep. Cit. 80, 118; 120, 573; 136, 42.

§ 1462. Same. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land. En. March 21, 1872.

Cal. Rep. Cit. 80, 118; 92, 95; 136, 41.

Effect of transfers generally: See ante, secs. 1083 et seq.

§ 1463. Same. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee. En. March 21, 1872.

Damages for the breach of the above covenants: See post, sec. 3304.

Letter of real property to secure quiet possession of the hirer: See post, sec. 1927.

§ 1464. What covenants run with land when assigns are named. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with land so far only as the assigns thus mentioned are concerned. En. March 21, 1872.

Cal. Rep. Cit. 66, 420.

See ante, sec. 1462.

§ 1465. Who are bound by covenants. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property. En. March 21, 1872.

Cal. Rep. Cit. 73, 587; 98, 480.

§ 1466. Who are not. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits. En. March 21, 1872.

Cal. Rep. Cit. 66, 421; 73, 587; 80, 534; 96, 407; 116, 88.

§ 1467. Apportionment of covenants. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. En. March 21, 1872.

§ 1468. Covenants to run with land. A covenant made by the owner of land with the owner of other land to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee, and which is made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with both of such parcels of land. En. Stats. 1905, 610.

This is a new section, and is designed to remove any doubt that covenants of the kind mentioned therein run with the land.—Code Commissioner's Note.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

Chapter I. Performance, §§ 1473-1479.
II. Offer of Performance, §§ 1485-1505.
III. Prevention of Performance or Offer, §§ 1511-1515.
IV. Accord and Satisfaction, §§ 1521-1524.
V. Novation, §§ 1530-1533.
VI. Release, §§ 1541-1543.

CHAPTER I.

PERFORMANCE.

§ 1473. Obligation extinguished by performance.
§ 1474. Performance by one of several joint debtors.
§ 1475. Performance to one of joint creditors.
§ 1476. Effect of directions by creditors.
§ 1477. Partial performance.
§ 1478. Payment, what.
§ 1479. Application of general performance.

§ 1473. Obligation extinguished by performance. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it. En. March 21, 1872.

Cal. Rep. Cit. 76, 468; 86, 187; 133, 577; 133, 579; 133, 580; 133, 581; 133, 582; 134, 582.

§ 1474. Performance by one of several joint debtors. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all. En. March 21, 1872.

Cal. Rep. Cit. 121, 653.

§ 1475. Performance to one of joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit. En. March 21, 1872.

Cal. Rep. Cit. 96, 278; 131, 425.

§ 1476. Effect of directions by creditors. If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance. En. March 21, 1872.

Cal. Rep. Cit. 76, 644.

§ 1477. Partial performance. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary. En. March 21, 1872.

Cal. Rep. Cit. 88, 552.

§ 1478. Payment, what. Performance of an obligation for the delivery of money only is called payment. En. March 21, 1872.

Cal. Rep. Cit. 99, 94.

§ 1479. Application of general performance. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of [the] debtor.

3. If neither party makes such application within the time prescribed herein, the performance must be applied

to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

(1) Of interest due at the time of the performance.

(2) Of principal due at that time.

(3) Of the obligation earliest in date of maturity.

(4) Of an obligation not secured by a lien or collateral undertaking.

(5) Of an obligation secured by a lien or collateral undertaking. En. March 21, 1872. Am'd. 1873-4, 239.

Cal. Rep. Cit. 69, 121; 81, 58; 88, 391; 145, 34. Subd. 1—81, 406; 114, 625; 144, 782. Subd. 3—97, 292; 119, 302; 125, 488; 141, 338.

CHAPTER II.

OFFER OF PERFORMANCE.

§ 1485. Obligation extinguished by offer of performance.
§ 1486. Offer of partial performance.
§ 1487. By whom to be made.
§ 1488. To whom to be made.
§ 1489. Where offer may be made.
§ 1490. When offer must be made.
§ 1491. Same.
§ 1492. Compensation after delay in performance.
§ 1493. Offer to be made in good faith.
§ 1494. Conditional offer.
§ 1495. Ability and willingness essential.
§ 1496. Production of thing to be delivered not necessary.
§ 1497. Thing offered to be kept separate.
§ 1498. Performance of condition precedent.
§ 1499. Written receipts.
§ 1500. Extinction of pecuniary obligation.
§ 1501. Objections to mode of offer.
§ 1502. Title to thing offered.
§ 1503. Custody of thing offered.
§ 1504. Effect of offer on accessories of obligation.
§ 1505. Creditor's retention of thing which he refuses to accept.

§ 1485. Obligation extinguished by offer of performance. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation. En. March 21, 1872.

Cal. Rep. Cit. 98, 382.

Tender of payment: See secs. 1500, 1504, infra.

Tender of article passes title: Sec. 1502, infra; and see sec. 1504.

Duties of person making tender: See sec. 1503.

§ 1486. Offer of partial performance. An offer of partial performance is of no effect. En. March 21, 1872.

Cal. Rep. Cit. 127, 483.

§ 1487. By whom to be made. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent. En. March 21, 1872.

Cal. Rep. Cit. 63, 139; 119, 303.

§ 1488. To whom to be made. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and, if not, wherever the creditor may be found. En. March 21, 1872. Am'd. 1873-4, 240.

Cal. Rep. Cit. 125, 690; 141, 316.

See next section.

§ 1489. Where offer may be made. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor;

1. At any place appointed by the creditor; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot, with reasonable diligence, be found within this state, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the state; or,

4. If this cannot be done, then at any place within this state. En. March 21, 1872.

Cal. Rep. Cit. 98, 407; 113, 24; 125, 219; 141, 316.

Delivery of personalty: See post, secs. 1753 et seq.

See post, sec. 1756, as to giving notice of time of delivery on sales of personalty.

§ 1490. When offer must be made. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards. En. March 21, 1872.

Cal. Rep. Cit. 74, 255; 86, 373; 123, 20; 127, 117.

§ 1491. Same. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform. En. March 21, 1872.

Cal. Rep. Cit. 74, 255.

§ 1492. Compensation after delay in performance. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime. En. March 21, 1872.

Cal. Rep. Cit. 74, 256; 92, 133; 93, 142; 96, 343; 96, 344; 123, 10; 123, 20; 133, 445.

§ 1493. Offer to be made in good faith. An offer of performance must be made in good faith, and in such manner as most likely, under the circumstances, to benefit the creditor. En. March 21, 1872.

Cal. Rep. Cit. 130, 143.

§ 1494. Conditional offer. An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform. En. March 21, 1872.

Cal. Rep. Cit. 71, 503, 122, 320; 125, 690; 126, 668.

Offer of performance upon condition: See post, secs. 1498, 1499.

§ 1495. Ability and willingness essential. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer. En. March 21, 1872.

Cal. Rep. Cit. 74, 256; 109, 633.

§ 1496. Production of thing to be delivered not necessary. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance unless the offer is accepted. En. March 21, 1872.

Cal. Rep. Cit. 97, 151; 137, 288.

§ 1497. Thing offered to be kept separate. A thing, when offered by way of performance, must not be mixed

with other things from which it cannot be separated immediately and without difficulty. En. March 21, 1872.

Vendor of personalty must put in condition for delivery: Post, sec. 1753.

§ 1498. Performance of condition precedent. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition. En. March 21, 1872.

Cal. Rep. Cit. 49, 25; 74, 255; 87, 59; 122, 321; 123, 543; 125, 690; 137, 289.

Conditions precedent: See ante, sec. 1439.

§ 1499. Written receipts. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation. En. March 21, 1872.

Cal. Rep. Cit. 49, 25; 125, 690.

See, also, Code Civ. Proc., sec. 2075.

§ 1500. Extinction of pecuniary obligation. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this state, of good repute, and notice thereof is given to the creditor. En. March 21, 1872.

Cal. Rep. Cit. 82, 51; 98, 395; 98, 399; 107, 115; 112, 37; 119, 544; 119, 550; 123, 543; 137, 382; 141, 712; 141, 713.

Tender stopping interest: See post, sec. 1504.

§ 1501. Objections to mode of offer. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor if not then stated. En. March 21, 1872.

Cal. Rep. Cit. 73, 530; 79, 43; 87, 59; 109, 564; 122, 320; 122, 321; 122, 322; 137, 288; 137, 382.

Similar provision although more specific in its requirements: Code Civ. Proc., sec. 2076.

§ 1502. Title to thing offered. The title to a thing duly offered in performance of an obligation passes to the

creditor, if the debtor at the time signifies his intention to that effect. En. March 21, 1872.

Cal. Rep. Cit. 98, 399; 106, 446.

§ 1503. Custody of thing offered. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person. En. March 21, 1872.

Depositary for hire: See post, sec. 1852.

§ 1504. Effect of offer on accessories of obligation. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation and has the same effect upon all its incidents as a performance thereof. En. March 21, 1872.

Cal. Rep. Cit. 50, 651; 74, 256; 98, 399; 113, 662; 123, 543; 143, 667; 143, 670.

Tender transfers title: See sec. 1502, supra.

Tender bars costs: Code Civ. Proc., sec. 1030.

Effect of offer in writing is the same as tender: Code Civ. Proc., sec. 2074.

§ 1505. Creditor's retention of thing which he refuses to accept. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof. En. March 21, 1872.

Costs when tender is made before suit brought: Code Civ. Proc., sec. 1030.

Gratuitous depositary: See post, secs. 1844 et seq.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

§ 1511. What excuses performance, etc.
§ 1512. Effect of prevention of performance.
§ 1513. Same. (Repealed.)
§ 1514. Same.
§ 1515. Effect of refusal to accept performance before offer.

§ 1511. What excuses performance, etc. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect done at or before the time at which such performance or offer may be made, and not rescinded before that time. En. March 21, 1872.

Cal. Rep. Cit. 95, 357; 96, 352; 98, 399. Subd. 2—129, 227. Subd. 3—119, 102; 144, 401.

§ 1512. Effect of prevention of performance. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties. En. March 21, 1872. Am'd. 1873-4, 240.

Cal. Rep. Cit. 86, 614; 92, 182; 105, 520.

§ 1513. Same. (Repealed.) **En. March 21, 1872.** Rep. 1873-4, 240.

§ 1514. Same. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit

which the creditor receives from the actual performance. En. March 21, 1872.

§ 1515. Effect of refusal to accept performance before offer. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it. En. March 21, 1872.

Cal. Rep. Cit. 98, 399.

Refusal to perform entitles the other party to enforce the obligation without performance on his part: See, ante, sec. 1440.

CHAPTER IV.

ACCORD AND SATISFACTION.

§ 1521. Accord, what.
§ 1522. Effect of accord.
§ 1523. Satisfaction, what.
§ 1524. Part performance.

§ 1521. Accord, what. An accord is an agreement to accept in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. En. March 21, 1872. Am'd. 1873-4, 240.

Cal. Rep. Cit. 92, 37; 119, 466; 142, 41.

Release of obligations: See post, secs. 1541 et seq.

Substituting a new obligation for the existing one is a novation: See post, secs. 1530 et seq.

Order on third person, effect of: See, post, sec. 1533.

§ 1522. Effect of accord. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed. En. March 21, 1872.

Cal. Rep. Cit. 92, 37; 142, 41.

§ 1523. Satisfaction, what. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction. En. March 21, 1872.

Cal. Rep. Cit. 56, 495; 92, 37; 142, 41.

See next section.

§ 1524. Part performance. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing, for that purpose, though without any new consideration, extinguishes the obligation. En. March 21, 1872. Am'd. 1873-4, 241.

Cal. Rep. Cit. 56, 495; 88, 552; 92, 37.

CHAPTER V.

NOVATION.

§ 1530. Novation, what.
§ 1531. Modes of novation
§ 1532. Novation a contract.
§ 1533. Rescission of novation.

§ 1530. Novation, what. Novation is the substitution of a new obligation for an existing one. En. March 21, 1872.

Cal. Rep. Cit. 49, 60; 60, 395.

See sec. 1532, infra.

Right to sue on contract made for one's benefit: See, post, sec. 1559.

§ 1531. Modes of novation. Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former. En. March 21, 1872.

Cal. Rep. Cit. 60, 395; 63, 502; 72, 551; 86, 576; 110, 263; 131, 497. Subd. 2—143, 7.

§ 1532. Novation a contract. Novation is made by contract, and is subject to all the rules concerning contracts in general. En. March 21, 1872.

Cal. Rep. Cit. 54, 338; 60, 395; 109, 596.

§ 1533. Rescission of novation. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such (such) acceptance if the debtor prevents such person from comply-

ing with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent. En. March 21, 1872. Am'd. 1873-4, 241.

CHAPTER VI.

RELEASE.

§ 1541. Obligation extinguished by release.
§ 1542. Certain claims not affected by general release.
§ 1543. Release of one of several joint debtors.

§ 1541. Obligation extinguished by release. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration. En. March 21, 1872.

Cal. Rep. Cit. 57, 51; 78, 555; 121, 253.

Writing imports a consideration: Post, sec. 1614.

§ 1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. En. March 21, 1872. Am'd. 1873-4, 241.

Cal. Rep. Cit. 86, 253; 86, 254; 119, 469; 134, 548.

§ 1543. Release of one of several joint debtors. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him. En. March 21, 1872.

Cal. Rep. Cit. 63, 158; 68, 89; 68, 90; 70, 114; 76, 7; 86, 253; 122, 654; 125, 512; 130, 254; 133, 113; 145, 533; 146, 171.

Guarantor's liability discharged: See post, sec. 2819.

Rights of sureties: See post, sec. 2844.

PART II.

CONTRACTS.

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TITLE I.

NATURE OF A CONTRACT.

Chapter I. Definition, §§ 1549-1550.
II. Parties, §§ 1556-1559.
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CHAPTER I.

DEFINITION.

§ 1549. Contract, what.
§ 1550. Essential elements of contract.

§ 1549. Contract, what. A contract is an agreement to do or not to do a certain thing. En. March 21, 1872.

Cal. Rep. Cit. 78, 536.

§ 1550. Essential elements of contract. It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration. En. March 21, 1872.

Cal. Rep. Cit. 64, 110; 85, 30; 115, 515; 139, 512; 145, 498. Subd. 2—135, 563.

Consent: See post, secs. 1565 et seq.

Unlawful contracts: See post, sec. 1667.

Consideration: See post, secs. 1605 et seq.

CHAPTER II.

PARTIES.

§ 1556. Who may contract.
§ 1557. Minors, etc.
§ 1558. Identification of parties necessary.
§ 1559. When contract for benefit of third person may be enforced.

§ 1556. Who may contract. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. En. March 21, 1872.

Cal. Rep. Cit. 54, 178.

Contracts of infants: See ante, secs. 33 et seq.

Contracts of persons of unsound mind: See ante, secs. 38 et seq.

Contracts of married women: See ante, secs. 158, 159, 167.

§ 1557. Minors, etc. Minors and persons of unsound mind have only such capacity as is defined by part I of division I of this code. En. March 21, 1872.

See ante, secs. 33 et seq.

§ 1558. Identification of parties necessary. It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them. En. March 21, 1872.

§ 1559. When contract for benefit of third person may be enforced. A contract, made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it. En. March 21, 1872.

Cal. Rep. Cit. 68, 389; 73, 525; 94, 84; 95, 168; 106, 553; 109, 136; 110, 346; 112, 258; 120, 574; 142, 708.

CHAPTER III.

CONSENT.

§ 1565. Essentials of consent.
§ 1566. Consent, when voidable.
§ 1567. Apparent consent, when not free.
§ 1568. When deemed to have been obtained by fraud, etc.
§ 1569. Duress, what.
§ 1570. Menace, what.
§ 1571. Fraud, actual or constructive.
§ 1572. Actual fraud, what.
§ 1573. Constructive fraud.
§ 1574. Actual fraud a question of fact.
§ 1575. Undue influence, what.
§ 1576. Mistake, what.
§ 1577. Mistake of fact.
§ 1578. Mistake of law.
§ 1579. Mistake of foreign laws.
§ 1580. Mutuality of consent.
§ 1581. Communication of consent.
§ 1582. Mode of communicating acceptance of proposal.
§ 1583. When communication deemed complete.
§ 1584. Acceptance by performance of conditions.
§ 1585. Acceptance must be absolute.
§ 1586. Revocation of proposal.
§ 1587. Revocation, how made.
§ 1588. Ratification of contract, void for want of consent.
§ 1589. Assumption of obligation by acceptance of benefits.

§ 1565. Essentials of consent. The consent of the parties to a contract must be:

1. Free;

2. Mutual; and,

3. Communicated by each to the other. En. March 21, 1872.

Cal. Rep. Cit. 82, 398; 85, 30; 123, 431; 139, 512; 140, 162. Subd. 3—125, 481; 135, 563.

Consent, when not free, and effect: Secs. 1566, 1567, infra.

Consent, when not mutual: See sec. 1580.

Consent, how communicated: See infra, secs. 1581 et seq.

§ 1566. Consent, when voidable. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission. En. March 21, 1872.

Cal. Rep. Cit. 71, 440; 82, 399; 85, 30; 95, 639; 110, 379; 126, 504; 129, 82; 129, 84; 129, 85.

Rescission of contracts: See post, secs. 1688 et seq.; secs. 3406 et seq.

§ 1567. Apparent consent, when not free. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake. En. March 21, 1872.

Cal. Rep. Cit. 71, 440; 82, 399; 85, 30; 129, 85; 141, 62. Subd. 5—134, 548.

Duress defined: Sec. 1569.
Menace defined: Sec. 1570.
Fraud defined: Sec. 1571.
Undue influence defined: Sec. 1575.
Mistake defined: Secs. 1576, 1577.

§ 1568. When deemed to have been obtained by fraud, etc. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed. En. March 21, 1872.

Cal. Rep. Cit. 82, 399; 85, 30; 130, 198; 138, 671; 145, 448; 147, 444.

§ 1569. Duress, what. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive. En. March 21, 1872.

Cal. Rep. Cit. 93, 455; 98, 575; 107, 308; 130, 198.

§ 1570. Menace, what. Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3 of the last section;

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person. En. March 21, 1872.

Cal. Rep. Cit. 93, 455; 130, 198.

§ 1571. Fraud, actual or constructive. Fraud is either actual or constructive. En. March 21, 1872.

Cal. Rep. Cit. 78, 225; 82, 383; 85, 30.

§ 1572. Actual fraud, what. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive. En. March 21, 1872.

Cal. Rep. Cit. 56, 365; 65, 402; 78, 225; 79, 316; 82, 383; 96, 440; 127, 535; 131, 477; 133, 443; 141, 62; 144, 312; 147, 743. Subd. 2—84, 649; 103, 42; 134, 663; Subd. 3—138, 671. Subd. 4—75, 527; 77, 26; 78, 131; 88, 477; 88, 565; 93, 359; 122, 581; 138, 671; 141, 390. Subd. 5—138, 671.

Fraudulent conveyance a misdemeanor: Pen. Code, sec. 531.

Fraudulent instruments and transfers: See post, secs. 3439 et seq.

Rescission of contracts for fraud: See post, sec. 1689.

Deceit: See post, secs. 1709, 1710.

§ 1573. Constructive fraud. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud. En. March 21, 1872.

Cal. Rep. Cit. 56, 365; 65, 402; 91, 18. Subd. 2—134, 663.

§ 1574. Actual fraud a question of fact. Actual fraud is always a question of fact. En. March 21, 1872.

Cal. Rep. Cit. 119, 434.

§ 1575. Undue influence, what. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress. En. March 21, 1872.

Cal. Rep. Cit. 56, 93; 79, 316; 94, 646; 97, 262; 141, 62. Subd. 1—90, 336; 103, 102; 134, 174; 135, 318.

Undue influence vitiating will: See ante, sec. 1272.

Rescission of contracts: See post, secs. 1689, 3406.

§ 1576. Mistake, what. Mistake may be either of fact or law. En. March 21, 1872.

Cal. Rep. Cit. 96, 659.

§ 1577. Mistake of fact. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed. En. March 21, 1872.

Cal. Rep. Cit. 68, 616; 119, 435; 119, 436; 122, 100; 138, 671. Subd. 1—119, 468; 131, 639; 134, 384; 144, 110.

§ 1578. Mistake of law. Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify. En. March 21, 1872.

Cal. Rep. Cit. 95, 74; 119, 469. Subd. 1—119, 468; 127, 537; 129, 478; 130, 479; 134, 548. Subd. 2—138, 671.

§ 1579. Mistake of foreign laws. Mistake of foreign laws is a mistake of fact. En. March 21, 1872.

Foreign laws, how proved: See Code Civ. Proc., secs. 1900, 1901.

§ 1580. Mutuality of consent. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on Interpretation, they are to be deemed so to agree without regard to the fact. En. March 21, 1872.

Cal. Rep. Cit. 60, 392; 137, 692.

Interpretation of contracts: See post, secs. 1635 et seq.

§ 1581. Communication of consent. Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication. En. March 21, 1872.

Cal. Rep. Cit. 140, 162.

§ 1582. Mode of communicating acceptance of proposal. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted. En. March 21, 1872.

Cal. Rep. Cit. 115, 515; 123, 431.

§ 1583. When communication deemed complete. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section. En. March 21, 1872.

Cal. Rep. Cit. 123, 431.

§ 1584. Acceptance by performance of conditions. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal. En. March 21, 1872.

Cal. Rep. Cit. 141, 706.

§ 1585. Acceptance must be absolute. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal. En. March 21, 1872.

Cal. Rep. Cit. 82, 87; 140, 161; 145, 625.

§ 1586. Revocation of proposal. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards. En. March 21, 1872.

Cal. Rep. Cit. 82, 87.

§ 1587. Revocation, how made. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 1581 and 1583, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer. En. March 21, 1872.

§ 1588. Ratification of contract, void for want of consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent. En. March 21, 1872.

Cal. Rep. Cit. 130, 433.

§ 1589. Assumption of obligation by acceptance of benefits. A voluntary accepance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting. En. March 21, 1872.

Cal. Rep. Cit. 86, 577; 100, 72; 105, 296; 105, 297; 105, 298; 113, 231; 113, 236; 113, 561; 120, 574; 130, 433; 137, 25; 141, 706; 144, 112.

CHAPTER IV.

OBJECT OF A CONTRACT.

§ 1595. Object, what.
§ 1596. Requisites of object.
§ 1597. Impossibility, what.
§ 1598. When contract wholly void.
§ 1599. When contract partially void.

§ 1595. Object, what. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do. En. March 21, 1872.

Cal. Rep. Cit. 126, 598.

Unlawful contracts: See next section, and post, secs. 1667 et seq.

Unlawful conditions: See ante, sec. 1441.

§ 1596. Requisites of object. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed. En. March 21, 1872.

See post, secs. 1667 et seq.

§ 1597. Impossibility, what. Everything is deemed possible except that which is impossible in the nature of things. En. March 21, 1872.

§ 1598. When contract wholly void. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void. En. March 21, 1872.

Cal. Rep. Cit. 132, 65.

§ 1599. When contract partially void. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest. En. March 21, 1872.

Cal. Rep. Cit. 59, 682; 136, 660.

CHAPTER V.

CONSIDERATION.

§ 1605. Good consideration, what.
§ 1606. How far legal or moral obligation is a good consideration.
§ 1607. Consideration lawful.
§ 1608. Effect of its illegality.
§ 1609. Consideration executed or executory.
§ 1610. Executory consideration.
§ 1611. How ascertained.
§ 1612. Effect of impossibility of ascertaining consideration.
§ 1613. Same.
§ 1614. Written instrument presumptive evidence of consideration.
§ 1615. Burden of proof to invalidate sufficient consideration.

§ 1605. Good consideration, what. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suf-

fered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise. En. March 21, 1872.

Cal. Rep. Cit. 89, 654; 104, 242; 126, 598; 139, 168; 145, 500.

§ 1606. How far legal or moral obligation is a good consideration. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise. En. March 21, 1872.

Cal. Rep. Cit. 112, 205.

§ 1607. Consideration lawful. The consideration of a contract must be lawful within the meaning of section 1667. En. March 21, 1872.

Cal. Rep. Cit. 68, 30; 82, 643; 83, 177; 125, 122.

Unlawful contracts: See post, secs. 1667 et seq.

§ 1608. Effect of its illegality. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void. En. March 21, 1872.

Cal. Rep. Cit. 67, 30; 68, 30; 82, 643; 83, 177; 96, 112; 125, 122; 131, 384; 136, 67.

§ 1609. Consideration executed or executory. A consideration may be executed or executory in whole or in part. In so far as it is executory it is subject to the provisions of chapter IV of this title. En. March 21, 1872.

Cal. Rep. Cit. 90, 375.

§ 1610. Executory consideration. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard. En. March 21, 1872.

Cal. Rep. Cit. 74, 296; 90, 375.

§ 1611. How ascertained. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party,

the consideration must be so much money as the object of the contract is reasonably worth. En. March 21, 1872.

Cal. Rep. Cit. 90, 375.

See following sections.

§ 1612. Effect of impossibility of ascertaining consideration. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void. En. March 21, 1872.

§ 1613. Same. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void. En. March 21, 1872.

§ 1614. Written instrument presumptive evidence of consideration. A written instrument is presumptive evidence of a consideration. En. March 21, 1872.

Cal. Rep. Cit. 62, 638; 67, 539; 68, 617; 69, 614; 75, 518; 79, 607; 85, 327; 86, 642; 88, 82; 96, 110; 100, 432; 100, 433; 103, 101; 106, 655; 111, 284; 120, 682; 124, 579; 129, 306; 131, 383; 143, 533; 143, 603.

Distinction between sealed and unsealed instruments abolished: See post, sec. 1629.

§ 1615. Burden of proof to invalidate sufficient consideration. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it. En. March 21, 1872.

Cal. Rep. Cit. 68, 617; 69, 614; 75, 518; 79, 607; 83, 177; 85, 327; 88, 82; 96, 110; 103, 101; 111, 284; 120, 682; 124, 579; 129, 306; 131, 383; 143, 533.

TITLE II.

MANNER OF CREATING CONTRACTS.

§ 1619. Contracts, express of implied.
§ 1620. Express contract, what.
§ 1621. Implied contract, what.
§ 1622. What contracts may be oral.
§ 1623. Contract not in writing through fraud, may be enforced against fraudulent party.
§ 1624. What contracts must be written.
§ 1625. Effect of writing
§ 1626. Contract in writing, takes effect when.
§ 1627. Provisions of chapter on transfers of real property.
§ 1628. Corporate seal, how affixed.
§ 1629. Provisions abolishing seals made applicable.

§ 1619. Contracts, express or implied. A contract is either express or implied. En. March 21, 1872.

§ 1620. Express contract, what. An express contract is one, the terms of which are stated in words. En. March 21, 1872.

Cal. Rep. Cit. 135, 563.

§ 1621. Implied contract, what. An implied contract is one, the existence and terms of which are manifested by conduct. En. March 21, 1872.

Cal. Rep. Cit. 79, 326.

Obligations imposed by law: See post, secs. 1708 et seq.

§ 1622. What contracts may be oral. All contracts may be oral, except such as are specially required by statute to be in writing. En. March 21, 1872.

Cal. Rep. Cit. 90, 359; 93, 495; 115, 515; 137, 243.

Contracts, when to be in writing: See infra, secs. 1623, 1624; Code Civ. Proc., secs. 1971-1974.

§ 1623. Contract not in writing through fraud, may be enforced against fraudulent party. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party. En. March 21, 1872.

Cal. Rep. Cit. 88, 486.

See Code Civ. Proc., secs. 1971-1974.

§ 1624. What contracts, must be written. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent;

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will. En. March 21, 1872. Am'd. 1873-4, 241; 1877-8, 86; 1905, 611.

The change consists in the addition of subdivision 7. The cases in which it is sought to establish by parol evidence alleged agreements to provide for a person by will are becoming so numerous as to warrant the assumption that the reasons inducing the original enactment of the statute of frauds apply with especial force to agreements of this class and that they ought to be brought within that statute.—Code Commissioner's Note.

Cal. Rep. Cit. 77, 282; 89, 570; 100, 29; 111, 285; 112, 635; 113, 484; 133, 478; 142, 403. Subd. 1—67, 93; 77, 388; 117, 591; 128, 158; 130, 356; 133, 478; 140, 689. Subd. 2—67, 659; 81, 288; 117, 592; 119, 241; 130, 413. Subd. 3—75, 300; 103, 160. Subd. 4—67, 93; 75, 526; 91, 671. Subd. 5—71, 47; 72, 144; 75, 169; 81, 207; 82, 546; 85, 598; 89, 569; 93, 495; 96, 109; 106, 600; 128, 158; 134, 229; 143, 366. Subd. 6—62, 302; 75, 511; 86, 641; 87, 116; 90, 858; 100, 28; 129, 390; 129, 489; 141, 111.

Statute of frauds: See Code Civ. Proc., secs. 1971-1974.
Memorandum by auctioneer: See post, sec. 1798.
Guaranty: See post, sec. 2793.
Sale of realty: See post, sec. 1741.
Fraudulent transfers: See post, sec. 3440.
Sales of personalty: See post, secs. 1739 et seq.
Guaranty: See post, secs. 2793 et seq.
Part performance taking case out of statute: See post, sec. 1741.

§ 1625. Effect of writing. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument. En. March 21, 1872. Am'd. 1905, 611.

Cal. Rep. Cit. 81, 7; 82, 478; 82, 546; 86, 340; 89, 621; 95, 570; 96, 109; 96, 110; 112, 51; 113, 440; 117, 211; 141, 228; 141, 731; 146, 97.

Writing supersedes oral stipulations: See post, sec. 1639.

§ 1626. Contract in writing, takes effect when. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent. En. March 21, 1872.

Cal. Rep. Cit. 115, 202; 129, 253.

Delivery of transfers in writing: See, generally, ante. sec. 1054.

§ 1627. Provisions of chapter on transfers of real property. The provisions of the chapter on Transfers in General, concerning the delivery of grants, absolute and conditional, apply to all written contracts. En. March 21, 1872.

Cal. Rep. Cit. 128, 546.

See ante, secs. 1052 et seq.

§ 1628. Corporate seal, how affixed. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written. En. March 21, 1872.

Cal. Rep. Cit. 64, 11.

See Code Civ. Proc., sec. 14; Pol. Code, sec. 14.

§ 1629. Provisions abolishing seals made applicable. All distinctions between sealed and unsealed instruments are abolished. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 67, 448; 100, 622; 118, 656; 129, 389.

TITLE III.

INTERPRETATION OF CONTRACTS.

§ 1635. Uniformity of interpretation.
§ 1636. Contracts, how to be interpreted.
§ 1637. Intention of parties, how ascertained.
§ 1638. Intention to be ascertained from language.
§ 1639. Interpretation of written contracts.
§ 1640. Writing, when disregarded.
§ 1641. Effect to be given to every part of contract.
§ 1642. Several contracts, when taken together.
§ 1643. Interpretation in favor of contract.
§ 1644. Words to be understood in usual sense.
§ 1645. Technical words.
§ 1646. Law of place.
§ 1647. Contracts explained by circumstances.
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§ 1650. Particular clause subordinate to general intent.
§ 1651. Contract, partly written and partly printed.
§ 1652. Repugnancies, how reconciled.
§ 1653. Inconsistent words rejected.
§ 1654. Words to be taken most strongly against whom.
§ 1655. Reasonable stipulations, when implied.
§ 1656. Necessary incidents implied.
§ 1657. Time of performance of contract.
§ 1658. Time, when of essence. (Repealed.)
§ 1659. When joint and several.
§ 1660. Same.
§ 1661. Executed and executory contracts, what.

§ 1635. Uniformity of interpretation. All contracts whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code. En. March 21, 1872.

Cal. Rep. Cit. 132, 19.

§ 1636. Contracts, how to be interpreted. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. En. March 21, 1872.

Cal. Rep. Cit. 57, 479; 81, 532; 95, 138; 104, 300; 111, 508; 119, 257; 126, 469; 132, 19; 135, 29; 141, 102; 141, 731.

Parol evidence to prove intention: See Code Civ. Proc., secs. 1855 et seq.

§ 1637. Intention of parties, how ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied. En. March 21, 1872.

Cal. Rep. Cit. 141, 102.

Parol evidence with respect to writings: See Code Civ. Proc., secs. 1855, 1856 et seq.

§ 1638. Intention to be ascertained from language. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity. En. March 21, 1872.

Cal. Rep. Cit. 123, 100; 141, 228; 141, 734.

§ 1639. Interpretation of written contracts. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title. En. March 21, 1872.

Cal. Rep. Cit. 62, 631; 141, 228; 141, 734; 146, 694.

Parol evidence in construing writings: See Code Civ. Proc., secs. 1855 et seq.

§ 1640. Writing, when disregarded. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded. En. March 21, 1872.

Cal. Rep. Cit. 62, 631; 107, 355; 137, 75.

See Code Civ. Proc., sec. 1856.

§ 1641. Effect to be given to every part of contract. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. En. March 21, 1872.

Cal. Rep. Cit. 62, 631; 62, 638; 81, 532; 81, 533; 104, 300; 131, 484.

§ 1642. Several contracts, when taken together. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together. En. March 21, 1872.

Cal. Rep. Cit. 62, 633; 84, 189; 131, 484; 133, 683; 137, 100; 142, 144; 147, 118.

§ 1643. Interpretation in favor of contract. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties. En. March 21, 1872.

Cal. Rep. Cit. 80, 618; 83, 62; 119, 257; 123, 100; 132, 65; 132, 566; 141, 102; 144, 37.

§ 1644. Words to be understood in usual sense. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed. En. March 21, 1872.

Cal. Rep. Cit. 57, 479; 87, 59; 95, 138; 125, 352; 132, 65; 144, 37.

§ 1645. Technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense. En. March 21, 1872.

Cal. Rep. Cit. 57, 479; 95, 138; 99, 372; 123, 143; 144, 37.

§ 1646. Law of place. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made. En. March 21, 1872.

Cal. Rep. Cit. 57, 479; 95, 138; 99, 372; 144, 735.

Usage: See Code Civ. Proc., sec. 1870, subd. 12.

§ 1647. Contracts explained by circumstances. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. En. March 21, 1872.

Cal. Rep. Cit. 77, 457; 78, 262; 83, 63; 99, 372; 126, 469; 132, 65; 134, 328; 137, 100; 141, 261; 141, 731.

§ 1648. Contract restricted to its evident object. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract. En. March 21, 1872.

Cal. Rep. Cit. 62, 633; 141, 731.

§ 1649. Interpretation in sense in which promisor believed promisee to rely. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee unlerstood it. En. March 21, 1872.

Cal. Rep. Cit. 74, 534; 107, 354; 109, 228; 132, 65; 133, 179.

Which construction preferred: Code Civ. Proc., sec. 1864.

§ 1650. Particular clause subordinate to general intent. Particular clauses of a contract are subordinate to its general intent. En. March 21, 1872.

Cal. Rep. Cit. 54, 370; 116, 67; 123, 100; 133, 658.

See infra, secs. 1652, 1653.

§ 1651. Contract, partly written and partly printed. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded. En. March 21, 1872.

Cal. Rep. Cit. 87, 239; 111, 509.

§ 1652. Repugnancies, how reconciled. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract. En. March 21, 1872.

Cal. Rep. Cit. 123, 100.

§ 1653. Inconsistent words rejected. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected. En. March 21, 1872.

Cal. Rep. Cit. 123, 100; 133, 658; 141, 731.

§ 1654. Words to be taken most strongly against whom. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party. En. March 21, 1872.

Cal. Rep. Cit. 83, 62; 107, 355; 110, 550; 111, 508; 125, 482; 131, 484; 133, 179; 136, 181; 141, 102; 141, 454.

§ 1655. Reasonable stipulations, when implied. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention. En. March 21, 1872.

Cal. Rep. Cit. 99, 372.

§ 1656. Necessary incidents implied. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded. En. March 21, 1872.

Cal. Rep. Cit. 62, 630; 62, 637; 99, 372; 126, 469.

§ 1657. Time of performance of contract. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained. En. March 21, 1872.

Cal. Rep. Cit. 97, 521; 119, 175; 124, 511; 143, 366; 147, 327.

§ 1658. Time, when of essence. (Repealed.) En. March 21, 1872. Rep. 1873-4, 242.

§ 1659. When joint and several. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several. En. March 21, 1872.

Cal. Rep. Cit. 129, 241; 129, 243; 133, 458; 140, 537.

Contracts, joint and several: See ante, secs. 1430 et seq.

§ 1660. Same. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several. En. March 21, 1872.

Cal. Rep. Cit. 121, 606; 129, 269.

§ 1661. Executed and executory contracts, what. An executed contract is one, the object of which is fully performed. All others are executory. En. March 21, 1872.

Cal. Rep. Cit. 81, 532; 126, 598.

TITLE IV.

UNLAWFUL CONTRACTS.

§ 1667. What is unlawful.
§ 1668. Certain contracts unlawful.
§ 1669. Penalties void. (Repealed.)
§ 1670. Contract fixing damages, void.
§ 1671. Exception.
§ 1672. Restraints upon legal proceedings. (Repealed.)
§ 1673. Contract in restraint of trade, void.
§ 1674. Exception in favor of sale of goodwill.
§ 1675. Exception in favor of partnership arrangments.
§ 1676. Contract in restraint of marriage, void.

§ 1667. What is unlawful. That is not lawful which is:

1. Contrary to an express provision of law;

2. Contrary to the policy of express law, though not expressly prohibited; or,

3. Otherwise contrary to good morals. En. March 21, 1872.

Cal. Rep. Cit. 68, 30; 79, 680; 81, 373; 81, 515; 83, 177; 84, 415; 91, 117; 112, 204; 117, 244; 119, 601; 123, 609; 125, 122; 125, 123; 127, 35; 131, 488. Subd. 1—96, 109. Subd. 2—96, 109. Subd. 3—127, 35.

Act to prevent combinations to obstruct the sale of livestock: See post, Appendix, title Animals.

Contracts in restraint of trade: See secs. 1673-1674, infra.

Contracts in restraint of marriage: See sec. 1676, infra.

Conditions, when void: See ante, secs. 709, 710, 711.

§ 1668. Certain contracts unlawful. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. En. March 21, 1872.

Cal. Rep. Cit. 93, 457.

§ 1669. Penalties void. (Repealed.) En. March 21, 1872. Rep. 1873-4, 242.

§ 1670. Contract fixing damages, void. Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void,

except as expressly provided in the next section. En. March 21, 1872.

Cal. Rep. Cit. 75, 209; 77, 472; 78, 609; 87, 450; 90, 82; 90, 119; 90, 120; 98, 4; 98, 8; 98, 9; 100, 78; 114, 66; 123, 5; 123, 21; 125, 565; 125, 567; 134, 328; 135, 404; 144, 499.

§ 1671. Exception The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage. En. March 21, 1872.

Cal. Rep. Cit. 66, 538; 75, 209; 77, 472; 78, 609; 82, 383; 87, 450; 90, 82; 90, 119; 90, 120; 98, 4; 98, 8; 98, 9; 100, 78; 110, 680; 123, 5; 123, 9; 125, 566; 125, 567; 135, 405; 144, 499; 144, 500.

§ 1672. Restraints upon legal proceedings. (Repealed.) En. March 21, 1872. Rep. 1873-4, 242.

Cal. Rep. Cit. 82, 383.

§ 1673. Contract in restraint of trade, void. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void. En. March 21, 1872.

Cal. Rep. Cit. 96, 513; 101, 298; 102, 510; 110, 153; 110, 679; 115, 604; 118, 357; 124, 431; 124, 433; 124, 434; 126, 180; 145, 387; 147, 118.

§ 1674. Exception in favor of sale of goodwill. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein. En. March 21, 1872.

Cal. Rep. Cit. 101, 298; 102, 510; 106, 336; 110, 153; 110, 679; 118, 357; 124, 431; 124, 433; 126, 180; 127, 181; 145, 387.

Goodwill of a business defined: Sec. 992, ante.

Goodwill of a business is property: Sec. 993, ante.

Sale of goodwill, implied warranty not to draw away customers: Sec. 1776, post.

Partner cannot dispose of godwill: See post, sec. 2430, subd. 2.

§ 1675. Exception in favor of partnership arrangements. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof. En. March 21, 1872.

Cal. Rep. Cit. 102, 510; 118, 357.

§ 1676. Contract in restraint of marriage, void. Every contract in restraint of the marriage of any person, other than a minor, is void. En. March 21, 1872.

Conditions in restrain of marriage: See ante, sec. 710.

TITLE V.

EXTINCTION OF CONTRACTS.

Chapter I. Contracts, How Extinguished, § 1682.
II. Rescission, §§ 1688-1691.
III. Alteration and Cancellation, §§ 1679-1701.

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

§ 1682. Contract, how extinguished.

§ 1682. Contract, how extinguished. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title. En. March 21, 1872.

Cal. Rep. Cit. 110, 263.

CHAPTER II.

RESCISSION.

§ 1688. Rescission extinguishes contract.
§ 1689. When party may rescind.
§ 1690. When stipulations against right to rescind do not defeat it.
§ 1691. Rescission, how effected.

§ 1688. Rescission extinguishes contract. A contract is extinguished by its rescission. En. March 21, 1872.

Cal. Rep. Cit. 66, 639; 93, 595.

§ 1689. When party may rescind. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties. En. March 21, 1872.

Cal. Rep. Cit. 66, 639; 78, 134; 85, 30; 86, 251; 98, 499; 114, 167; 137, 290; 146, 390; 146, 671; 147, 743. Subd. 1—70, 254; 71, 440; 82, 398; 85, 31; 92, 37; 94, 366; 94, 646; 129, 85; 134, 548. Subd. 2—129, 372; 131, 546; 133, 443; 136, 635; 138, 672. Subd. 3—133, 443. Subd. 4—93, 594; 131, 546; 133, 444. Subd. 5—63, 577.

See post, secs. 3406 et seq., on rescission.

Rescinding sale of personalty for nonpayment of price: See post, sec. 1749.

§ 1690. When stipulations against right to rescind do not defeat it. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation. En. March 21, 1872.

§ 1691. Rescission, how effected. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract;

or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so. En. March 21, 1872.

Cal. Rep. Cit. 78, 398; 85, 531; 96, 282; 98, 499; 103, 292; 109, 426; 110, 379; 119, 264; 119, 648; 123, 16; 124, 268; 124, 544; 129, 85; 132, 280; 132, 521; 133, 444; 146, 389; 146, 390; 146, 672; 147, 743. Subd. 1—54, 190; 70, 254; 78, 396; 85, 31; 92, 37; 99, 227; 99, 357; 142, 320. Subd. 2—71, 229; 85, 190; 86, 361; 87, 60; 92, 37; 99, 357; 123, 642; 130, 433.

Rescission of contracts: See secs. 3406-3408, post.

CHAPTER III.

ALTERATION AND CANCELLATION.

§ 1697. Alteration of verbal contract.
§ 1698. Written contracts, how modified.
§ 1699. Extinction by cancellation, etc.
§ 1700. Extinction by unauthorized alteration.
§ 1701. Alteration of duplicate, not to prejudice.

§ 1697. Alteration of verbal contract. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration. En. March 21, 1872. Am'd. 1873-4, 242.

Cal. Rep. Cit. 110, 263; 129, 305; 134, 29.

Alterations in written instrument to be accounted for by the party producing it in evidence: Code Civ. Proc., sec. 1982.

§ 1698. Written contracts, how modified. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. En. March 21, 1872. Am'd. 1873-4, 243.

Cal. Rep. Cit. 66, 115; 68, 28; 77, 388; 82, 546; 95, 634; 103, 167; 104, 170; 112, 52; 112, 635; 112, 636; 117, 211; 120, 659; 121, 175; 123, 686; 126, 598; 127, 657; 127, 658; 129, 305; 132, 136; 140, 62; 146, 199; 146, 560.

Parol evidence to alter writings: See Code Civ. Proc., sec. 1856; and see ante, sec. 1639.

§ 1699. Extinction by cancellation, etc. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act. En. March 21, 1872.

Cal. Rep. Cit. 87, 584.

§ 1700. Extinction by unauthorized alteration. The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act. En. March 21, 1872.

§ 1701. Alteration of duplicate not to prejudice. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section. En. March 21, 1872.

PART III.

OBLIGATIONS IMPOSED BY LAW.

§ 1708. Abstinence from injury.
§ 1709. Fraudulent deceit.
§ 1710. Deceit, what.
§ 1711. Deceit upon the public, etc.
§ 1712. Restoration of thing wrongfully acquired.
§ 1713. When demand necessary.
§ 1714. Responsibility for willful acts, negligence, etc.
§ 1715. Other obligations.

§ 1708. Abstinence from injury. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights. En. March 11, 1872.

Cal. Rep. Cit. 110, 385; 111, 45; 118, 321; 123, 44.

As to what injuries are criminal: See Pen. Code, secs. 346-367.

§ 1709. Fraudulent deceit. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers. En. March 21, 1872.

Cal. Rep. Cit. 65, 326; 65, 327; 76, 193; 77, 25; 99, 185; 134, 444; 136, 28.

§ 1710. Deceit, what. A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4 A promise, made without any intention of performing it. En. March 21, 1872.

Cal. Rep. Cit. 65, 326; 65, 327; 76, 193; 77, 26; 79, 238; 81, 6; 82, 82; 96, 440; 99, 186; 136, 28.

Fraud actual and constructive: See secs. 1571 et seq.

§ 1711. Deceit upon the public, etc. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. En. March 11, 1872.

§ 1712. Restoration of thing wrongfully acquired. One who obtains a thing without the consent of its owner, or by a consent afterward rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides. En. March 11, 1872.

§ 1713. When demand necessary. The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake. En. March 11, 1872.

§ 1714. Responsibility for willful acts, negligence, etc. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief. En. March 11, 1872.

Cal. Rep. Cit. 66, 586; 68, 459; 95, 291; 118, 321; 123, 44; 123, 649.

Compensatory relief: See post, secs. 3281 et seq.

§ 1715. Other obligations. Other obligations are prescribed by divisions I and II of this code. En. March 11, 1872.

Cal. Rep. Cit. 98, 553.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

Title I. Sale, §§ 1721-1798.
II. Exchange, §§ 1804-1807.
III. Deposit, §§ 1813-1878.
IV. Loan, §§ 1884-1920.
V. Hiring, §§ 1925-1959.
VI. Service, §§ 1965-2079.
VII. Carriage, §§ 2085-2209.
VIII. Trust, §§ 2215-2289.
IX. Agency, §§ 2295-2389.
X. Partnership, §§ 2395-2520.
XI. Insurance, §§ 2527-2766.
XII. Indemnity, §§ 2772-2781.
XIII. Guaranty, §§ 2787-2866.
XIV. Lien, §§ 2872-3080.
XV. Negotiable Instruments, §§ 3086-3262.
XVI. General Provisions, § 3268.

TITLE I.

SALE.

Chapter I. General Provisions, §§ 1721-1741.
II. Rights and Obligations of the Seller, §§ 1748-1778.
III. Rights and Obligations of the Buyer, §§ 1784-1786.
IV. Sale by Auction, §§ 1792-1798.

CHAPTER I.

GENERAL PROVISIONS.

Article I. Sale, §§ 1721-1722.
II. Agreements for Sale, §§ 1726-1734.
III. Form of the Contract, §§ 1739-1741.

ARTICLE I.

SALE.

§ 1721. Sale, what.
§ 1722. Subject of sale.

§ 1721. Sale, what. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property. En. March 21, 1872.

Cal. Rep. Cit. 97, 71; 99, 93.

§ 1722. Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer. En. March 21, 1872.

Cal. Rep. Cit. 97, 71.

ARTICLE II.

AGREEMENTS FOR SALE.

§ 1726. Agreement for sale.
§ 1727. Agreement to sell.
§ 1728. Agreement to buy.
§ 1729. Agreement to sell and buy.
§ 1730. What may be the subject of the contract.
§ 1731. Agreement to sell real property.
§ 1732. Form of grant required by such contract. (Repealed.)
§ 1733. Usual common law covenants required by such contracts, when.
§ 1734. Form of such covenants.

§ 1726. Agreement for sale. An agreement for sale is either:

1. An agreement to sell;

2. An agreement to buy; or,

3. A mutual agreement to sell and buy. En. March 21, 1872.

Cal. Rep. Cit. 87, 54; 95, 137.

§1727. Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing. En. March 21, 1872.

Cal. Rep. Cit. 74, 379; 98, 380; 147, 749.

§ 1728. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing. En. March 21, 1872.

§ 1729. Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to trans-

fer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor. En. March 21, 1872.

Cal. Rep. Cit. 63, 577; 87, 54; 98, 381.

§ 1730. What may be the subject of the contract. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not. En. March 21, 1872.

Cal. Rep. Cit. 95, 137.

§ 1731. Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. En. March 21, 1872. Am'd. 1873-4, 243.

Cal. Rep. Cit. 109, 563.

§ 1732. Form of grant required by such contract. (Repealed.) En. March 21, 1872. Rep. 1873-4, 243.

§ 1733. Usual common law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances." En. March 21, 1872.

§ 1734. Form of such covenants. The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same." En. March 21, 1872.

ARTICLE III.

FORM OF THE CONTRACT.

§ 1739. Contract for sale of personal property.
§ 1740. Contract to manufacture.
§ 1741. Contract for sale of real property.

§ 1739. Contract for sale of personal property. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

3. The buyer, at the time of sale, pays a part of the price. En. March 21, 1872. Am'd. 1873-4, 243.

Cal. Rep. Cit. 67, 93; 68, 17; 70, 400; 70, 402; 91, 670; 105, 519; 119, 551; 123, 549.

Statute of frauds: See Code Civ. Proc., secs. 1971-1974.

§ 1740. Contract to manufacture. An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section. En. March 21, 1872.

Cal. Rep. Cit. 91, 670.

§ 1741. Contracts for sale of real property. No agreement for the sale of real property, or of an interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof. En. March 21, 1872. Am'd. 1873-4, 243.

Cal. Rep. Cit. 64, 26; 78, 534; 87, 54; 91, 446; 93, 495; 140, 159; 142, 156.

Statute of frauds: See Code Civ. Proc., secs. 1971-1974.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

Article I. Rights and Duties before Delivery, §§ 1748, 1749.
II. Delivery, §§ 1753-1758.
III. Warranty, §§ 1763-1778.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

§ 1748. When seller must act as depositary.
§ 1749. When seller may resell.

§ 1748. When seller must act as depositary. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it. En. March 21, 1872.

§ 1749. When seller may resell. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale or may enforce his lien for the price, in the manner prescribed by the title on liens. En. March 21, 1872.

Cal. Rep. Cit. 58, 435; 86, 536; 120, 419; 120, 420.

Rescission of contracts, generally: See ante, secs. 1688 et seq.; post, secs. 3406 et seq.

Rescission of contract for sale by buyer: See post, secs. 1785, 1786.

Liens: See post, secs. 2872 et seq.

ARTICLE II.

DELIVERY.

§ 1753. Delivery on demand.
§ 1754. Delivery, where made.
§ 1755. Expense of transportation.
§ 1756. Notice of election as to delivery.
§ 1757. Buyer's directions as to manner of sending thing sold.
§ 1758. Delivery to be within reasonable hours.

§ 1753. Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and

deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon. En. March 21, 1872.

Cal. Rep. Cit. 82, 479; 147, 319.

Performance generally: See ante, secs. 1473, 1485 et seq.

Delivery sufficient as to third person: See sec. 3440, post.

§ 1754. Delivery, where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced. En. March 21, 1872.

Cal. Rep. Cit. 84, 213; 147, 319.

§ 1755. Expense of transportation. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer. En. March 21, 1872.

§ 1756. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived. En. March 21, 1872.

§ 1757. Buyer's directions as to manner of sending thing sold. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer. En. March 21, 1872.

§ 1758. Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day. En. March 21, 1872.

ARTICLE III.

WARRANTY.

§ 1763. Warranty, what.
§ 1764. No implied warranty in mere contract of sale.
§ 1765. Warranty of title to personal property.
§ 1766. Warranty on sale by sample.
§ 1767. When seller knows that buyer relies on his statements, etc.
§ 1768. Merchandise not in existence.
§ 1769. Manufacturer's warranty against latent defects.
§ 1770. Thing bought for particular purpose.
§ 1771. When thing cannot be examined by buyer.
§ 1772. Trademarks.
§ 1773. Other marks.
§ 1774. Warranty on sale of written instrument.
§ 1775. Warranty of provisions for domestic use.
§ 1776. Warranty on sale of goodwill.
§ 1777. Warranty upon judicial sale.
§ 1778. Effect of general warranty.

§ 1763. Warranty, what. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future. En. March 21, 1872.

Cal. Rep. Cit. 66, 239.

§ 1764. No implied warranty in mere contract of sale. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty. En. March 21, 1872.

Cal. Rep. Cit. 65, 274; 66, 239; 92, 123; 139, 584; 145, 280.

Warranty of genuineness on exchange of money: Post, sec. 1807.

§ 1765. Warranty of title to personal property. One who sells or agrees to sell personal property as his own, thereby warrants that he has a good and unencumbered title thereto. En. March 21, 1872.

Cal. Rep. Cit. 113, 353.

§ 1766. Warranty on sale by sample. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample. En. March 21, 1872.

Cal. Rep. Cit. 145, 278; 147, 327.

§ 1767. When seller knows that buyer relies on his statements, etc. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller, nor any agent employed by him in the trans-

action, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy. En. March 21, 1872.

§ 1768. Merchandise not in existence. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care. En. March 21, 1872.

Cal. Rep. Cit. 75, 561; 76, 214; 116, 245.

§ 1769. Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein. En. March 21, 1872.

Cal. Rep. Cit. 67, 613; 75, 561; 134, 328.

§ 1770. Thing bought for particular purpose. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose. En. March 21, 1872.

Cal. Rep. Cit. 63, 576; 65, 274; 67, 613; 75, 561; 76, 214; 120, 229; 120, 231; 134, 328.

§ 1771. When thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable. En. March 21, 1872.

Cal. Rep. Cit. 65, 275; 76, 214; 145, 280; 147, 327.

§ 1772. Trademarks. One who sells or agrees to sell any article to which there is affixed or attached a trademark, thereby warrants that mark to be genuine and lawfully used. En. March 21, 1872.

Selling goods with counterfeit trademark: See Pen. Code, sec. 351.

§ 1773. Other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the

place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof. En. March 21, 1872.

Owner of trademark: Pol. Code, sec. 3199.

§ 1774. Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause. En. March 21, 1872. Am'd. 1873-4, 244.

Cal. Rep. Cit. 86, 188; 92, 124; 92, 127; 92, 128; 96, 161; 103, 324; 139, 585.

§ 1775. Warranty of provisions for domestic use. One who makes a business of selling provisions for domestic use warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome. En. March 21, 1872.

§ 1776. Warranty on sale of goodwill. One who sells the goodwill of a business, thereby warrants that he will not endeavor to draw off any of the customers. En. March 21, 1872.

Cal. Rep. Cit. 71, 148; 114, 665; 124, 432.

§ 1777. Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property. En. March 21, 1872.

Cal. Rep. Cit. 120, 424.

§ 1778. Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects. En. March 21, 1872.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 1784. Price, when to be paid.
§ 1785. Right to inspect goods.
§ 1786. Rights in case of breach of warranty.

§ 1784. Price, when to be paid. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it. En. March 21, 1872.

Cal. Rep. Cit. 76, 215; 82, 479.

When seller must act as failee: See ante, sec. 1748.

§ 1785. Right to inspect goods. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a seasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so. En. March 21, 1872.

Rescission of contract by seller: See ante, sec. 1749.

Rescission by buyer for breach of warranty: See next section.

§ 1786. Rights in case of breach of warranty. The breach of warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition. En. March 21, 1872.

Cal. Rep. Cit. 96, 92.

CHAPTER IV.

SALE BY AUCTION.

§ 1792. Sale by auction, what.
§ 1793. Sale, when complete.
§ 1794. Withdrawal of bid.
§ 1795. Sale under written conditions.
§ 1796. Rights of buyer upon sale without reserve.
§ 1797. By bidding.
§ 1798. Auctioneer's memorandum of sale.

§ 1792. Sale by auction, what. A sale by auction is a sale by public outcry to the highest bidder on the spot. En. March 21, 1872.

Auctioneers, authority of generally: See secs. 2362, 2363. See regulations in Pol. Code, secs. 3284 et seq., respecting auctioneers' bonds, license, etc.

§ 1793. Sale, when complete. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold. En. March 21, 1872.

§ 1794. Withdrawal of bid. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer. En. March 21, 1872.

§ 1795. Sale under written conditions. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit. En. March 21, 1872.

§ 1796. Rights of buyer upon sale without reserve. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void. En. March 21, 1872.

§ 1797. By bidding. The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer which entitles him to rescind his purchase. En. March 21, 1872.

§ 1798. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer, in his sale-book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves. En. March 21, 1872. Am'd. 1873-4, 244.

Auctioneer **agent to make memorandum; See ante, sec. 1624, subd. 4.**

TITLE II.

EXCHANGE.

§ 1804. Exchange, what.
§ 1805. Form of contract.
§ 1806. Parties have rights and obligations of sellers and buyers.
§ 1807. Warranty of money.

§ 1804. Exchange, what. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only. En. March 21, 1872.

Cal. Rep. Cit. 71, 292.

§ 1805. Form of contract. The provisions of section 1739 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more. En. March 21, 1872.

§ 1806. Parties have rights and obligations of sellers and buyers. The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes. En. March 21, 1872.

Cal. Rep. Cit. 71, 293; 74, 379.

§ 1807. Warranty of money. On an exchange of money each party thereby warrants the genuineness of the money given by him. En. March 21, 1872.

TITLE III.

DEPOSIT.

Chapter I. Deposit in General, §§ 1813-1827.
II. Deposit for Keeping, §§ 1833-1872.
III. Deposit for Exchange, § 1878.

CHAPTER I.

DEPOSIT IN GENERAL.

Article I. Nature and Creation of Deposit, §§ 1813-1818.
II. Obligations of the Depositary, §§ 1822-1827.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

§ 1813. Deposit, kinds of.
§ 1814. Voluntary deposit, how made.
§ 1815. Involuntary deposit, how made.
§ 1816. Duty of involuntary depositary.
§ 1817. Deposit for keeping, what.
§ 1818. Deposit for exchange, what.

§ 1813. Deposit, kinds of. A deposit may be voluntary or involuntary; and for safekeeping or for exchange. En. March 21, 1872.

Deposit for keeping: Post, secs. 1833 et seq.

Gratuitous deposit, and incidents: Post, secs. 1844 et seq.

Deposit for hire: Post, secs. 1851 et seq.

Deposit for exchange: Post, sec. 1878.

Loan for use: Secs. 1884 et seq; loan for exchange: Sec. 1902; loan of money: Sec. 1912.

Hiring: See post, secs. 1925 et seq.

Innkeepers: Post, secs. 1859 et seq.

Common carriers: Secs. 2085 et seq.

Pledge: Post, secs. 2986 et seq.

§ 1814. Voluntary deposit, how made. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary. En. March 21, 1872.

Finder of lost articles: See post, secs. 1864 et seq.

Obligations of the depositary: See secs. 1822 et seq.

§ 1815. Involuntary deposit, how made. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person. En. March 21, 1872.

Cal. Rep. Cit. 58, 122.

Involuntary deposit in cases of emergency must be accepted: See next section.

Involuntary deposit is gratuitous: See Post, sec. 1845.

Degree of care requisite: See post, sec. 1846.

Duties of depositary, when cease: See post, sec. 1847.

§ 1816. Duty of involuntary depositary. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so. En. March 21, 1872.

§ 1817. Deposit for keeping, what. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited. En. March 21, 1872.

Deposit for keeping: See post, secs. 1833 et seq.

§ 1818. Deposit for exchange, what. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited. En. March 21, 1872.

Deposit for exchange transfers title: Post, sec. 1878.

Loan for exchange: See post, secs. 1902 et seq.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

§ 1822. Depositary must deliver on demand.
§ 1823. No obligation to deliver without demand.
§ 1824. Place of delivery.
§ 1825. Notice to owner of adverse claim.
§ 1826. Notice to owner of thing wrongfully detained.
§ 1827. Delivery of thing owned jointly, etc.

§ 1822. Depositary must deliver on demand. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or

by the act of the law, and has given the notice required by section 1825. En. March 21, 1872.

Cal. Rep. Cit. 93, 287; 113, 102.

See post, secs. 1823, 1826.

Care required of depositary: See post, sec. 1852.

Depositary's lien: Consult section 3051 for a general lien upon personalty dependent on possession.

Notice of adverse proceedings: Post, sec. 1825.

Lien of innkeepers: See secs. 1861 et seq.

§ 1823. **No obligation to deliver without demand.** A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time. En. March 21, 1872.

Cal. Rep. Cit. 113, 102.

§ 1824. **Place of delivery.** A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him. En. March 21, 1872.

Cal. Rep. Cit. 58, 122.

Delivery in sales: See secs. 1753 et seq.

§ 1825. **Notice to owner of adverse claim.** A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him. En. March 21, 1872.

Cal. Rep. Cit. 93, 287.

§ 1826. **Notice to owner of thing wrongfully detained.** A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterward he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice. En. March 21, 1872.

§ 1827. **Delivery of thing owned jointly, etc.** If a thing deposited is owned jointly or in common by persons who

cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing. En. March 21, 1872.

CHAPTER II.

DEPOSIT FOR KEEPING.

Article I. General Provisions, §§ 1833-1840.
II. Gratuitous Deposit, §§ 1844-1847.
III. Storage, §§ 1851-1857.
IIIa. Warehousemen, §§ 1858-1858f.
IV. Innkeepers, §§ 1859-1863.
V. Finding, §§ 1864-1872.

ARTICLE I.

GENERAL PROVISIONS.

§ 1833. Depositor must indemnify depositary.
§ 1834. Obligation of depositary of animals.
§ 1835. Obligations as to use of thing deposited.
§ 1836. Liability for damage arising from wrongful use.
§ 1837. Sale of thing in danger of perishing.
§ 1838. Injury to, or loss of thing deposited.
§ 1839. Service rendered by depositary.
§ 1840. Extent of his liability for negligence.

§ 1833. Depositor must indemnify depositary. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking. En. March 21, 1872.

Lenders' liability for defects of articles borrowed: See sec. 1894.

§ 1834. Obligation of depositary of animals. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly. En. March 21, 1872.

Lien on keepers of livestock: See post, sec. 3051.

§ 1835. Obligations as to use of thing deposited. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the

depositor, open it without the consent of the latter, except in case of necessity. En. March 21, 1872.

Cal. Rep. Cit. 94, 350; 112, 601.

See next section.

Hiring: See post, secs. 1925 et seq.

§ 1836. Liability for damage arising from wrongful use. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used. En. March 21, 1872.

§ 1837. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor. En. March 21, 1872.

§ 1838. Injury to, or loss of thing deposited. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur. En. March 21, 1872.

Cal. Rep. Cit. 53, 736.

§ 1839. Service rendered by depositary. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service. En. March 21, 1872.

See post, secs. 1965 et seq.

§ 1840. Extent of his liability for negligence. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth. En. March 21, 1872. Am'd. 1873-4, 244.

Cal. Rep. Cit. 133, 538.

ARTICLE II.

GRATUITOUS DEPOSIT.

§ 1844. Gratuitous deposit, what.
§ 1845. Nature of involuntary deposit.
§ 1846. Degree of care required of gratuitous depositary.
§ 1847. His duties cease, when.

Gen. Cit. to Art.—Cal. Rep. Cit. 103, 379; 116, 414.

§ 1844. Gratuitous deposit, what. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited. En. March 21, 1872.

Cal. Rep. Cit. 103, 379; 116, 414.

Degree of care necessary: See next section. If this bailment correspond to the mandatum as generally understood, requiring on the part of the bailee some service to be performed with respect to the deposit, then sections 1839, supra, and sections 1975, 1976, 1977, post, must be read together with section 1846, in determining the degree of care which this bailee must use.

§ 1845. Nature of involuntary deposit. An involuntary deposit is gratuitous, the depositary being entitled to no reward. En. March 21, 1872.

Involuntary deposit defined: See ante, sec. 1815.

§ 1846. Degree of care required of gratuitous depositary. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited. En. March 21, 1872.

Degree of care requisite: See note to sec. 1844, supra.

§ 1847. His duties cease, when. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 1815, cannot give such notice until the emergency which gave rise to the deposit is past. En. March 21, 1872.

ARTICLE III.

STORAGE.

§ 1851. Deposit for hire.
§ 1852. Degree of care required of depositary for hire.
§ 1853. Rate of compensation for fraction of a week, etc.
§ 1854. Termination of deposit.
§ 1855. Same.
§ 1856. Lien for storage charges.
§ 1857. Storage property to be sold.

§ 1851. Deposit for hire. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. En. March 21, 1872.

Cal. Rep. Cit. 120, 598.

Receipts of warehousemen and wharfingers, act in relation to: See post, Appendix, title Warehouses and Wharfingers.

Hiring in general: See post, sec. 1925.

§ 1852. Degree of care required of depositary for hire. A depositary for hire must use at least ordinary care for the preservation of the thing deposited. En. March 21, 1872.

Cal. Rep. Cit. 56, 486; 113, 104; 120, 598.

Liability of innkeepers: See sec. 1859.

Common carriers: Secs. 2100, 2114, 2194.

Liability of warehousemen: See post, secs. 2120, 2121.

§ 1853. Rate of compensation for fraction of a week, etc. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. En. March 21, 1872.

Warehouseman making advances may sell property when: See Pol. Code, sec. 3156.

§ 1854. Termination of deposit. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice. En. March 21, 1872.

§ 1855. Same. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. En. March 21, 1872.

§ 1856. Lien for storage charges. A depositary for hire has a lien for storage charges, which is regulated by the title on liens. En. Stats. 1891, 470.

Cal. Rep. Cit. 125, 599.

§ 1857. Storage property to be sold. If, from any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause such property to be sold, in open market, to satisfy his lien for storage; provided, that no property except perishable property shall be sold, under the provisions of this section, upon which storage charges shall not be due and unpaid for one year at the time of such sale. En. Stats. 1891, 470.

Cal. Rep. Cit. 125, 599.

CHAPTER [ARTICLE] IIIa.

Article added March 21, 1905. Stats. 1905, 612.

WAREHOUSEMEN.

§ 1858. Warehouse receipts, when must not be issued.
§ 1858a. Property not to be removed without consent in writing.
§ 1858b. Warehouse receipts, classification and effect of.
§ 1858c. Indorsement on negotiable receipt of property delivered.
§ 1858d. Negotiable receipts and their effect.
§ 1858e. Liability for loss by fire.
§ 1858f. Penalties and liabilities.

§ 1858. Warehouse receipts, when must not be issued. A warehouseman, wharfinger, or other person doing a storage business must not issue any receipt or voucher for any merchandise, grain, or other product or thing of value, to any person purporting to be the owner thereof, nor to any person as security for any indebtedness or for the performance of any obligation, unless such mechandise, grain, or other product, commodity, or thing has been, in good faith, received by such warehouseman, wharfinger, or other person, and is in his store or under his control at the time of issuing his receipt; nor must any second receipt for any

such property be issued while a former receipt for any part thereof is outstanding and uncanceled. En. Stats. 1905, 612.

The statute of 1877-8, page 949, relating to warehousemen's and wharfinger's receipts, is codified in the above sections.—Code Commissioner's Note.

§ 1858a. Property not to be removed without consent in writing. No warehouseman, wharfinger, or other person must sell or incumber, ship, transfer, or remove beyond his immediate control any property for which a receipt has been given, without the consent in writing of the person holding such receipt plainly indorsed thereon in ink. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858b. Warehouse receipts, classification and effect of. Warehouse receipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and, in the case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face, in red ink, in bold, distinct letters, the word "non-negotiable." En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858c. Indorsement on negotiable receipt of property delivered. If a negotiable receipt is issued for any property, neither the person issuing it nor any other person into whose care or control the property comes must deliver any part thereof without indorsing on the back of the receipt, in ink, the amount and date of the delivery; nor can he be allowed to make any offset, claim, or demand other than is expressed on the face of the receipt, when called upon to deliver any property for which it was issued. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858d. Negotiable receipts and their effect. If a non-negotiable receipt is issued for any property, neither the

person issuing nor any other person in whose care or control the property comes must deliver any part thereof, except upon the written order of the person to whom the receipt was issued. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858e. Liability for loss by fire. No warehouseman or other person doing a general storage business is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation. En. Stats. 1905, 613.

See note to § 1858, ante.

§ 1858f. Penalties and liabilities. Every warehouseman, wharfinger, or other person who violates any of the provisions of sections eighteen hundred and fifty-eight to eighteen hundred and fifty-eight e, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars, or imprisoned in the state prison not exceeding five years, or both. He is also liable to any person aggrieved by such violation for all damages, immediate or consequent, which he may have sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not. En. Stats. 1905, 613.

See note to § 1858, ante.

ARTICLE IV.

INNKEEPERS.

§ 1859. Innkeeper's liability.
§ 1860. How exempted from liability.
§ 1861. Lien of boarding and lodging house keepers.
§ 1862. Unclaimed baggage may be sold at auction. Notice.
§ 1863. Keeper to post rates of charges.

§ 1859. Innkeeper's liability. The liability of an innkeeper, hotel-keeper, boarding and lodging-house keeper, for losses of or injuries to personal property, other than money placed by his guests, boarders, or lodgers under his care, is that of a depositary for hire; provided, however, that in no case shall such liability exceed the sum of one hundred dollars for each trunk and its contents, fifty dollars for each valise or traveling bag and contents, and ten dollars for each box, bundle, or package and contents, so placed under his care, unless he shall have consented

in writing with the owner thereof to assume a greater liability. En. March 21, 1872. Am'd. 1895, 50.

Cal. Rep. Cit. 87, 485; 93, 261; 93, 262. Subd. 5—96, 492; 96, 493.

See next section.

Refusing to receive and entertain guests a misdemeanor: Pen. Code, sec. 365.

Cubic air law: See post, Appendix, title Lodging-houses.

§ 1860. How exempted from liability. If an innkeeper, hotel-keeper, boarding-house or lodging-house keeper, keeps a fireproof safe, and gives notice to a guest, boarder, or lodger, either personally or by putting up a printed notice in a prominent place in the office or the room occupied by the guest, boarder, or lodger, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts shall contribute thereto, for any loss of or injury to such articles, if not deposited with him to be placed therein, nor in any case more than the sum of two hundred and fifty dollars for any or all such property of any individual guest, boarder, or lodger, unless he shall have given a receipt in writing therefor to such guest, boarder, or lodger. En. March 21, 1872. Am'd. 1895, 50.

§ 1861. Lien of boarding and lodging house keepers. Hotel men, boarding-house and lodging-house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging-house by such guests, or boarders or lodgers, for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent [and] such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid. En. Stats. 1875-6, 78.

Obtaining accommodations with intent to defraud: See **Pen. Code, sec. 537.**

§ 1862. Unclaimed baggage may be sold at auction. Notice. Whenever any trunk, carpet bag, valise, box, bundle, or other baggage has heretofore come, or shall

hereafter come, into the possession of the keeper of any hotel, inn, boarding or lodging-house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging-house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of such keeper, and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county. En. Stats. 1875-6, 78.

§ 1863. **Keeper to post rates of charges.** Every keeper of a hotel, inn, boarding or lodging-house, shall post, in [a] conspicuous place, in the office, or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charge, or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered; or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging-house. For any violation of this section or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to. En. Stats. 1875-6, 79.

ARTICLE V.

FINDING.

§ 1864. Obligation of finder.
§ 1865. Finder of goods or money, or saving animals, duty of.
§ 1865. Finder to notify owner.
§ 1866. Claimant to prove ownership.
§ 1867. Reward, etc., to finder.
§ 1868. Finder may put thing found on storage.
§ 1869. When finder may sell the thing found.
§ 1870. How sale is to be made.
§ 1871. Property vests in finder; when; liability of finder to owner.
§ 1872. Thing abandoned.

§ 1864. Obligation of finder. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire. En. March 21, 1872.

Lost money and goods: Sec. Pol. Code, secs. 3136-3142.
Depositary for hire: See ante, secs. 1851 et seq.

§ 1865. Finder of goods or money, or saving animals, duty of. If the finder of a thing, other than a domestic animal, takes possession thereof, or if a person saves any such animal from drowning or starvation, he must, within a reasonable time, inform the owner thereof, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring therefor. If the owner is not known to such finder or saver, he must, within five days, file an affidavit with the justice of the peace of the county whose office is nearest to the place of such finding or saving, particularly describing the property and the time, place, and circumstances under which it was found or saved. Such justice must then summon three disinterested persons to appraise the property. They, or a majority of them, must make two lists of the valuation and description of the property, by them verified, and deliver one of such lists to the justice of the peace, to be kept by him on file in his office, and the other list must be delivered to such finder or saver, who must, within five days thereafter, cause it to be filed for record in the office of the county recorder of the county, who must record it in a book known as the "Estray and Lost Property Book." En. March 21, 1872. Am'd. 1905, 613.

The section is amended to incorporate therein the provisions, upon the same subject, of sections 3136, 3137, and 3138 of the Political Code.—Code Commissioner's Note.

§ 1865. Finder to notify owner. If the finder of a thing knows or suspects who is the owner, he must, with reason-

able diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses. En. March 21, 1872.

If owner is not known finder must report to justice of the peace and advertise. If he fails to do so he forfeits double the value thereof to the owner. Pol. Code, secs. 3136-3142.

Finder, when guilty of larceny: See Pen. Code, sec. 485.

§ 1866. Claimant to prove ownership. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it. En. March 21, 1872.

§ 1867. Reward, etc., to finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it. En. March 21, 1872.

§ 1868. Finder may put thing found on storage. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense. En. March 21, 1872.

§ 1869. When finder may sell the thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, refuses, upon demand, to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two-thirds of its value. En. March 21, 1872.

Lost money and goods: See Pol. Code, secs. 3136-3142.

§ 1870. How sale is to be made. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged. En. March 21, 1872.

Cal. Rep. Cit. 136, 181.

Sale of pledge: See post, secs. 3000 et seq.

§ 1871. Property vests in finder, when; liability of finder to owner. If no owner appears within six months

after such finding or saving and offers reasonable proof of his ownership, and compensates, or in good faith offers to compensate, the finder or saver for the expense necessarily incurred by him, then such property vests in such finder or saver, unless it is of greater value than twenty dollars. If of such greater value, he must publish a copy of such verified list for three successive weeks in some newspaper of general circulation published in the county, and if the owner does not, within one year after the completion of such publication, prove the property and pay, or in good faith offer to pay, all charges thereon, the title thereto vests in such finder or saver. If the finder or saver of property does not comply with the provisions of section eighteen hundred and sixty-five, or if, though he does so comply, he refuses to surrender the property to an owner who has made reasonable proof of ownership, and paid, or in good faith offered to pay, all legal charges thereon, he is liable to the owner for double the value of the property, and the owner may exonerate himself from all liability arising out of such property by surrendering, or offering to surrender, it in satisfaction thereof. En. March 21, 1872. Am'd. 1905, 614.

The section is amended to incorporate therein the provisions of sections 3139, 3140, and 3141 of the Political Code.—Code Commissioner's Note.

§ 1872. Thing abandoned. The provisions of this article have no application to things which have been intentionally abandoned by their owners. En. March 21, 1872.

Cal. Rep. Cit. 115, 590; 115, 592.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

§ 1878. Relations of the parties.

§ 1878. Relations of the parties. A deposit for exchange transfers to the depositary, the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely. En. March 21, 1872.

Deposit for exchange defined: Ante, sec. 1818.

Loan for exchange: See post, sec. 1902.

TITLE IV.

LOAN.

Chapter I. Loan for Use, §§ 1884-1896.
II. Loan for Exchange, §§ 1902-1906.
III. Loan of Money, §§ 1912-1920.

CHAPTER I.

LOAN FOR USE.

§ 1884. Loan, what.
§ 1885. Title to property lent.
§ 1886. Care required of borrower.
§ 1887. Same.
§ 1888. Degree of skill.
§ 1889. Borrower, when to repair injuries.
§ 1890. Use of thing lent.
§ 1891. Relending forbidden.
§ 1892. Borrower, when to bear expenses.
§ 1893. Lender liable for defects.
§ 1894. Lender may require return of thing lent.
§ 1895. When returnable without demand.
§ 1896. Place of return.

§ 1884. Loan, what. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use. En. March 21, 1872.

§ 1885. Title to property lent. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender. En. March 21, 1872.

§ 1886. Care required of borrower. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent. En. March 21, 1872.

§ 1887. Same. One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it. En. March 21, 1872.

Depositary of living animals for keeping. See ante, sec. 1834.

§ 1888. Degree of skill. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess. En. March 21, 1872.

Compare with sec. 1976.

§ 1889. Borrower, when to repair injuries. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight. En. March 21, 1872.

§ 1890. Use of thing lent. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending. En. March 21, 1872.

See next section.

§ 1891. Relending forbidden. The borrower of a thing for use must not part with it to a third person, without the consent of the lender. En. March 21, 1872.

Cal. Rep. Cit. 123, 493.

§ 1892. Borrower, when to bear expenses. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrowed. En. March 21, 1872.

§ 1893. Lender liable for defects. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower. En. March 21, 1872.

See, also, ante, sec. 1833.

Loan for exchange: See post, secs. 1902, 1906.

§ 1894. Lender may require return of thing lent. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But, if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty. En. March 21, 1872.

Cal. Rep. Cit. 50, 348.

§ 1895. When returnable without demand. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the

time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded. En. March 21, 1872.

§ 1896. Place of return. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time. **En. March 21, 1872.**

CHAPTER II.

LOAN FOR EXCHANGE.

§ 1902. Loan for exchange, what.
§ 1903. Same.
§ 1904. Title to property lent.
§ 1905. Contract cannot be modified by lender.
§ 1906. Certain sections applicable.

§ 1902. Loan for exchange, what. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use. En. March 21, 1872.

Loan of money as a loan for exchange: See sec. 1912.

§ 1903. Same. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter. En. March 21, 1872.

§ 1904. Title to property lent. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase. En. March 21, 1872.

§ 1905. Contract cannot be modified by lender. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon. En. March 21, 1872.

§ 1906. Certain sections applicable. Sections 1893, 1895, and 1896, apply to a loan for exchange. En. March 21, 1872.

CHAPTER III.

LOAN OF MONEY.

§ 1912. Loan of money, defined.
§ 1913. Loan to be repaid in current money.
§ 1914. Loan presumed to be on interest.
§ 1915. Interest, what.
§ 1916. Annual rate.
§ 1917. Legal interest.
§ 1918. Parties may agree on any rate.
§ 1919. Interest becomes part of principal, when.
§ 1920. Interest on judgment.

§ 1912. Loan of money, defined. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on Loan for Use. En. March 21, 1872.

Cal. Rep. Cit. 57, 602.

Interest: See secs. 1914 et seq.

§ 1913. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. En. March 21, 1872.

Cal. Rep. Cit. 113, 229; 114, 261.

See sec. 668, Cole Civ. Proc.

Detriment caused by breach of obligation to loan: See post, sec. 3302.

§ 1914. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. En. March 21, 1872. Am'd. 1873-4, 244.

Cal. Rep. Cit. 116, 546; 127, 675; 137, 471.

§ 1915. Interest, what. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance, or detention of money. En. March 21, 1872. Am'd. 1873-4, 245.

Cal. Rep. Cit. 72, 154; 110, 315; 122, 120; 129, 547; 131, 363; 137, 469; 137, 470; 137, 471.

§ 1916. Annual rate. When a rate of interest is prescribed by a law or contract, without specifying the period

of time by which such rate is to be calculated, it is to be deemed an annual rate. En. March 21, 1872.

Cal. Rep. Cit. 92, 82.

§ 1917. Legal interest. Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of seven per cent per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent or due on any settlement of account, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year. En. March 21, 1872. Am'd. 1873-4, 245; 1877-8, 87.

Cal. Rep. Cit. 57, 643; 65, 499; 66, 238; 70, 186; 72, 153; 73, 319; 89, 635; 100, 22; 102, 292; 106, 573; 109, 380; 110, 316; 110, 317; 111, 72; 113, 229; 116, 545; 120, 109; 120, 122; 131, 363; 134, 674; 136, 371; 137, 470; 143, 527.

Interest on judgments: See infra, sec. 1920.

Compounding interest: See infra, sec. 1919.

§ 1918. Parties may agree on any rate. Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment. En. March 21, 1872.

Cal. Rep. Cit. 60, 232; 60, 393; 65, 393; 108, 151; 110, 112; 113, 229; 114, 66; 116, 538; 116, 541; 116, 542; 116, 545; 116, 546; 120, 109; 120, 122.

§ 1919. Interest becomes part of principal, when. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt. En. March 21, 1872.

Cal. Rep. Cit. 63, 106; 65, 393; 114, 66; 116, 536; 116, 538; 116, 529; 116, 540; 116, 541; 116, 542; 116, 545; 116, 546.

§ 1920. Interest on judgment. Interest is payable on judgments recovered in the courts of this state, at the rate of seven per cent per annum, and no greater rate, but

such interest may not be compounded in any manner or form. En. March 21, 1872. Am'd. 1873-4, 245.

Cal. Rep. Cit. 49, 314; 127, 59; 129, 546; 137, 469; 137, 471.

Interest as damages: See post, sec. 3287.

TITLE V.

HIRING.

Chapter I. Hiring in General, §§ 1925-1935.
II. Hiring of Real Property, §§ 1941-1950.
III. Hiring of Personal Property, §§ 1955-1959.

CHAPTER I.

HIRING IN GENERAL.

§ 1925. Hiring, what.
§ 1926. Products of thing.
§ 1927. Quiet possession.
§ 1928. Degree of care, etc., on part of hirer.
§ 1929. Must repair injuries, etc.
§ 1930. Thing let for a particular purpose.
§ 1931. When letter may terminate the hiring.
§ 1932. Hirer may terminate the hiring, when.
§ 1933. When hiring terminates.
§ 1934. When terminated by death, etc., of party.
§ 1935. Apportionment of hire.

§ 1925. Hiring, what. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. En. March 21, 1872.

Hiring personalty: See post, secs. 1955 et seq. •

§ 1926. Products of thing. The products of a thing hired, during the hiring, belong to the hirer. En. March 21, 1872.

§ 1927. Quiet possession. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same. En. March 21, 1872.

Cal. Rep. Cit. 86, 304; 117, 70.

Duty of letter of building in this respect: See post, sec. 1941.

Duty of letter of personalty likewise: See post, sec. 1955.

§ 1928. Degree of care, etc., on part of hirer. The hirer of a thing must use ordinary care for its preservation in safety and in good condition. En. March 21, 1872.

Cal. Rep. Cit. 118, 369.

§ 1929. Must repair injuries, etc. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care. En. March 21, 1872. Am'd. 1905, 614.

The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

Cal. Rep. Cit. 59, 566; 86, 304; 92, 551; 102, 480; 118, 369.

Repairs.—This requirement results from the rule of the previous section, and the same rule applies to realty: See post, sec. 1941. With respect to the consequence of not complying with its provisions, see sec. 1931, infra.

§ 1930. Thing let for a particular purpose. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded. En. March 21, 1872. Am'd. 1905, 614.

The change consists in the substitution of the words "he is liable to the letter for all damages resulting from such use, or the letter" in place of the words "the letter who is responsible for its safety during such use in all events, or."—Code Commissioner's Note.

Cal. Rep. Cit. 118, 369.

§ 1931. When letter may terminate the hiring. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make. En. March 21, 1872.

§ 1932. Hirer may terminate the hiring, when. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer. En. March 21, 1872. Am'd. 1905, 614.

The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

Cal. Rep. Cit. 92, 552.

§ 1933. When hiring terminates. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
4. By the destruction of the thing hired. En. March 21, 1872.

Cal. Rep. Cit. 98, 425.

§ 1934. When terminated by death, etc., of party. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby. En. March 21, 1872.

§ 1935. Apportionment of hire. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him. En. March 21, 1872.

For the compensation to which a depositary for hire is entitled upon a termination of the deposit, see ante, secs. 1853-1855.

CHAPTER II.

HIRING OF REAL PROPERTY.

§ 1941. Lessor to make dwelling-house fit for its purpose.
§ 1942. When lessee may make repairs, etc.
§ 1943. Term of hiring when no limit is fixed.
§ 1944. Hiring of lodgings for indefinite term.
§ 1945. Renewal of lease by lessee's continued possession.
§ 1946. Notice to quit.
§ 1947. Rent, when payable.
§ 1948. Attornment of a tenant to a stranger.
§ 1949. Tenant must deliver notice served on him.
§ 1950. Letting parts of rooms forbidden.

§ 1941. Lessor to make dwelling-house fit for its purpose. The lessor of a building intended for the occupation

of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in section nineteen hundred and twenty-nine. En. March 21, 1872. Am'd. 1873-4, 245.

Cal. Rep. Cit. 59, 565; 59, 566; 66, 182; 76, 174; 81, 59; 86, 205; 86, 304; 92, 551; 92, 552; 102, 480; 124, 522; 124, 523; 128, 190.

§ 1942. When lessee may make repairs, etc. If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the costs of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions. En. March 21, 1872. Am'd. 1873-4, 246.

Cal. Rep. Cit. 59, 565; 59, 566; 72, 312; 76, 174; 86, 205; 92, 550; 92, 552; 102, 480; 102, 481; 110, 220; 124, 523; 128, 190.

§ 1943. Term of hiring when no limit is fixed. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring. En. March 21, 1872.

§ 1944. Hiring of lodgings for indefinite term. A hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly. En. March 21, 1872.

§ 1945. Renewal of lease by lessee's continued possession. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time not exceeding one month when the rent is payable monthly, nor in any case one year. En. March 21, 1872.

Cal. Rep. Cit. 86, 440; 123, 591; 124, 248.

§ 1946. Notice to quit. A hiring of real property, for a term not specified by the parties is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month. En. March 21, 1872.

Cal. Rep. Cit. 86, 439; 124, 248.

Termination of estates at will: See ante, secs. 789 et seq.

§ 1947. Rent, when payable. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due. En. March 21, 1872.

§ 1948. Attornment of a tenant to a stranger. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction. En. March 21, 1872.

Grants of rents or reversions: See ante, sec. 1111.

Rights of lessor and lessee, on transfer of realty: See ante, secs. 821 et seq.

§ 1949. Tenant must deliver notice served on him. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him [if] in writing. En. March 21, 1872. Am'd. 1873-4, 246.

§ 1950. Letting parts of rooms forbidden. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues. En. March 21, 1872.

Cubic air law: See post, Appendix, title Lodging-houses.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

§ 1955. Obligations of letter of personal property.
§ 1956. Ordinary expenses.
§ 1957. Extraordinary expenses.
§ 1958. Return of thing hired.
§ 1959. Charter-party, what.

§ 1955. Obligations of letter of personal property. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use. En. March 21, 1872.

Quiet enjoyment: See ante, sec. 1927.

§ 1956. Ordinary expenses. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter. En. March 21, 1872.

§ 1957. Extraordinary expenses. If a letter fails to fulfill his obligations, as prescribed by section 1955, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him. En. March 21, 1872.

Cal. Rep. Cit. 106, 680.

§ 1958. Return of thing hired. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time. En. March 21, 1872.

§ 1959. Charter-party, what. The contract by which a ship is let is termed a charter-party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer. En. March 21, 1872.

See ante, sec. 965.

TITLE VI.

SERVICE.

Chapter I. Service with Employment, §§ 1965-2003.
II. Particular Employments, §§ 2009-2072.
III. Service without Employment, §§ 2078-2079.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

Article I. Definition of Employment, § 1965.
II. Obligations of the Employer, §§ 1969-1971.
III. Obligations of the Employee, §§ 1975-1992.
IV. Termination of Employment, §§ 1996-2003.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

§ 1965. Employment, what.

§ 1965. Employment, what. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer, or of a third person. En. March 21, 1872.

Cal. Rep. Cit. 55, 274; 80, 558; 124, 98.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

§ 1969. When employer must indemnify employee.
§ 1970. When not.
§ 1971. Employer to indemnify for his own negligence.

§ 1969. When employer must indemnify employee. An employer must indemnify his employee except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful. En. March 21, 1872.

Cal. Rep. Cit. 68, 173.

§ 1970. When not. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which

he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee, or unless the employer has neglected to use ordinary care in the selection of the culpable employee. En. March 21, 1872. Am'd. 1903, 256.

Cal. Rep. Cit. 51, 117; 51, 257; 53, 36; 57, 29; 57, 31; 66, 304; 68, 173; 68, 175; 70, 394; 73, 28; 79, 99; 88, 367; 88, 368; 88, 371; 92, 392; 96, 273; 96, 498; 98, 21; 98, 22; 98, 26; 100, 564; 100, 567; 103, 264; 108, 132; 113, 601; 126, 64; 126, 65; 128, 53; 142, 255.

§ 1971. Employer to indemnify for his own negligence. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care. En. March 21, 1872.

Cal. Rep. Cit. 67, 609; 90, 499; 91, 58; 108, 133; 125, 635.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

§ 1975. Duties of gratuitous employee.
§ 1976. Same.
§ 1977. Same.
§ 1978. Duties of employee for reward.
§ 1979. Duties of employee for his own benefit.
§ 1980. Contracts for service limited to two years.
§ 1981. Employee must obey employer.
§ 1982. Employee to conform to usage.
§ 1983. Degree of skill required.
§ 1984. Must use what skill he has.
§ 1985. What belongs to employer.
§ 1986. Duty to account.
§ 1987. Employee not bound to deliver without demand.
§ 1988. Preference to be given to employers.
§ 1989. Responsibility of employee for substitute.
§ 1990. Responsibility for negligence.
§ 1991. Surviving employee.
§ 1992. Confidential employment.

§ 1975. Duties of gratuitous employee. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein. En. March 21, 1872.

Service without employment: See post, sec. 2078.

Obligations of gratuitous carrier: Sec. 2089.

§ 1976. Same. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time. En. March 21, 1872.

Compare with sec. 1888.

§ 1977. Same. A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so. En. March 21, 1872.

§ 1978. Duties of employee for reward. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed. En. March 21, 1872.

Cal. Rep. Cit. 113, 104.

Employee to use ordinary care.—He is bound to exercise a reasonable degree of skill, unless his employer knows of his want of skill: Sec. 1983; and is always bound to use such skill as he possesses: Sec. 1984. For the employee's liability for his culpable negligence, see post, sec. 1990.

§ 1979. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter. En. March 21, 1872.

§ 1980. Contracts for service limited to two years. A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on Master and Servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation. En. March 21, 1872.

Cal. Rep. Cit. 139, 81; 139, 84.

Master and servant: See post, secs. 2009 et seq.; and as to apprenticeship: See ante, secs. 264 et seq.

§ 1981. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged,

except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee. En. March 21, 1872. Am'd. 1873-4, 246.

Obedience required from factor: Sec. 2027.

§ 1982. Employee to conform to usage. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so. En. March 21, 1872.

Cal. Rep. Cit. 99, 371.

§ 1983. Degree of skill required. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill. En. March 21, 1872.

Cal. Rep. Cit. 107, 209.

§ 1984. Must use what skill he has. An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified. En. March 21, 1872. Am'd. 1873-4, 247.

Cal. Rep. Cit. 107, 209.

§ 1985. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment. En. March 21, 1872.

Cal. Rep. Cit. 133, 638.

§ 1986. Duty to account. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account. En. March 21, 1872.

§ 1987. Employee not bound to deliver without demand. An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself. En. March 21, 1872.

Servant to pay over without demand: See sec. 2014.

§ 1988. Preference to be given to employers. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. En. March 21, 1872. Am'd. 1873-4, 247.

§ 1989. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal. En. March 21, 1872.

Delegation of agent's authority: See post, secs. 2349 et seq.

§ 1990. Responsibility for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered. En. March 21, 1872.

Cal. Rep. Cit. 78, 314.

§ 1991. Surviving employee. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise. En. March 21, 1872.

§ 1992. Confidential employment. The obligations peculiar to confidential employments are defined in the title on Trusts. En. March 21, 1872.

Confidential employments: See title on Trusts, post, secs. 2215 et seq.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

§ 1996. Termination by death, etc., of employer.
§ 1997. Employment, how terminated.
§ 1998. Continuance of service in certain cases.
§ 1999. Termination at will.
§ 2000. Termination by employer for fault.
§ 2001. Termination by employee for fault.
§ 2002. Compensation of employee dismissed for cause.
§ 2003. Compensation of employee leaving for cause.

§ 1996. Termination by death, etc., of employer. Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract. En. March 21, 1872.

Cal. Rep. Cit. 76, 509.

Termination of agency: See post, secs. 2355 et seq.

§ 1997. Employment, how terminated. Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or,
4. By his legal incapacity to act as such. En March 21, 1872.

Cal. Rep. Cit. 124, 98.

Termination of employment: See last section.

Termination of agency generally: See post, secs. 2355 et seq.

§ 1998. Continuance of service in certain cases. An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment. En. March 21, 1872.

Cal. Rep. Cit. 76, 509.

§ 1999. Termination at will. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title. En. March 21, 1872.

Cal. Rep. Cit. 124, 96.

§ 2000. Termination by employer for fault. An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it. En. March 21, 1872.

Cal. Rep. Cit. 69, 646.

Servant, when may be discharged: See post, sec. 2015.

Seaman, when may be discharged: See post, sec. 2050; wrongful discharge of seamen; Post, sec. 2057.

§ 2001. Termination by employee for fault. An employment, even for a specified term, may be terminated by the employee at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee. En. March 21, 1872.

Employee's compensation in such case: See post, sec. 2003.

§ 2002. Compensation of employee dismissed for cause. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract. En. March 21, 1872.

Cal. Rep. Cit. 69, 646.

Discharging servant: See sec. 2015.

§ 2003. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance. En. March 21, 1872.

Terminating employment by employee: See supra, sec. 2001.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

Article I. Master and Servant, §§ 2009-2015.
II. Agents, §§ 2019-2022.
III. Factors, §§ 2026-2030.
IV. Shipmasters, §§ 2034-2044.
V. Mates and Seamen, §§ 2048-2068.
VI. Ship's Managers, §§ 2070-2072.

ARTICLE I.

MASTER AND SERVANT.

§ 2009. Servant, what.
§ 2010. Term of hiring.
§ 2011. Same.
§ 2012. Renewal of hiring.
§ 2013. Time of service.
§ 2014. Servant to pay over without demand.
§ 2015. When servant may be discharged.

§ 2009. Servant, what. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and

direction of the latter, who is called his master. En. March 21, 1872.

Cal. Rep. Cit. 124, 97; 124, 98; 131, 459; 138, 118.

Employer and employee: See, generally, secs. 1965 et seq.

Obligations of employer: Secs. 1969 et seq.

Obligations of employee: Secs. 1975 et seq.

§ 2010. Term of hiring. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term. En. March 21, 1872.

Cal. Rep. Cit. 111, 316; 124, 97; 124, 98; 127, 592.

§ 2011. Same. In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed. En. March 21, 1872.

Cal. Rep. Cit. 111, 317; 124, 97; 124, 98; 127, 592.

§ 2012. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service. En. March 21, 1872.

Cal. Rep. Cit. 89, 550; 145, 267.

§ 2013. Time of service. The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day. En. March 21, 1872.

§ 2014. Servant to pay over without demand. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person. En. March 21, 1872.

One who appropriates to his own use property of his employer is guilty of embezzlement: Pen. Code, sec. 508.

Employee not bound to deliver to employer without demand: See post, sec. 1987.

§ 2015. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him. En. March 21, 1872.

Termination of employment: See ante, sec. 2001.

Compensation of employee dismissed for cause: See ante, sec. 2002.

ARTICLE II.

AGENTS.

§ 2019. Agent to conform to his authority.
§ 2020. Must keep his principal informed.
§ 2021. Collecting agent.
§ 2022. Responsibility of subagent.

§ 2019. Agent to conform to his authority. An agent must not exceed the limits of his actual authority, as defined by the title on Agency. En. March 21, 1872.

Cal. Rep. Cit. 68, 162; 125, 614.

Agency: Secs. 2295 et seq,

Actual authority: Post, sec. 2316.

Ostensible authority: Post, sec. 2317.

§ 2020. Must keep his principal informed. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency. En. March 21, 1872.

§ 2021. Collecting agent. An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in

case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence. En. March 21, 1872.

§ 2022. Responsibility of subagent. A mere agent of an agent is not responsible as such to the principal of the the latter. En. March 21, 1872.

ARTICLE III.

FACTORS.

§ 2026. Factor, what.
§ 2027. Obedience required from factor.
§ 2028. Sales on credit.
§ 2029. Liability of factor under guaranty commission.
§ 2030. Factor cannot relieve himself from liability.

§ 2026. Factor, what. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. En. March 21, 1872.

Cal. Rep. Cit. 66, 461.

Factor's authority: See secs. 2368, 2369.

Factor's power to pledge principal's goods: See secs. 2368, 2991.

§ 2027. Obedience required from factor. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale and proceeding in all respects as a pledgee. En. March 21, 1872.

Cal. Rep. Cit. 85, 377.

Obedience required from employees generally: Ante, sec. 1981.

§ 2028. Sales on credit. A factor may sell property consigned to him on such credit as is usual; but, having once

agreed with the purchaser upon the term of credit, may not extend it. En. March 21, 1872.

Authority to sell on credit: Post, sec. 2368.

§ 2029. Liability of factor under guaranty commission. A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds. En. March 21, 1872.

§ 2030. Factor cannot relieve himself from liability. A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal. En. March 21, 1872.

ARTICLE IV.

SHIPMASTERS.

§ 2034. Appointment of master.
§ 2035. When must be on board.
§ 2036. Pilotage.
§ 2037. Power of master over seamen.
§ 2038. Power of master over passengers.
§ 2039. Impressing private stores.
§ 2040. When may abandon the ship.
§ 2041. Duties on abandonment.
§ 2042. When master cannot trade on his own account.
§ 2043. Care and diligence.
§ 2044. Authority of master.

§ 2034. Appointment of master. The master of a ship is appointed by the owner and holds during his pleasure. En. March 21, 1872.

§ 2035. When must be on board. The master of a ship is bound to be always on board when entering or leaving a port, harbor, or river. En. March 21, 1872.

§ 2036. Pilotage. On entering or leaving a port, harbor, or river the master of a ship must take a pilot if one offers himself and while the pilot is on board the navigation of the ship devolves on him. En. March 21, 1872.

Duties of pilots and pilot commissioners: See Pol. Code, secs. 2429-2491.

§ 2037. Power of master over seamen. The master of a ship may enforce the obedience of the mate and seamen to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by acts of congress, being responsible for the abuse of his power. En. March 21, 1872.

§ 2038. Power of master over passengers. The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands. En. March 21, 1872.

§ 2039. Impressing private stores. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want on payment of their value, or giving security therefor. En. March 21, 1872.

§ 2040. When may abandon the ship. The master of a ship must not abandon it during the voyage, without the advice of the other officers. En. March 21, 1872.

§ 2041. Duties on abandonment. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability. En. March 21, 1872.

§ 2042. When master cannot trade on his own account. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him. En. March 21, 1872.

§ 2043. Care and diligence. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight. En. March 21, 1872.

§ 2044. Authority of master. The authority and liability of the master of a ship, as an agent for the owners of the

ship and cargo, are regulated by the title on Agency. En. March 21, 1872.

Agency in general: Post, secs. 2295 et seq.

Bottomry, master may hypothecate upon; Post, secs. 3019 et seq.

Respondentia, master may hypothecate upon: Post, secs. 3038 et seq.

ARTICLE V.

MATES AND SEAMEN.

§ 2048. Mate, what.
§ 2049. Seamen, what.
§ 2050. Mate and seamen, how engaged and discharged.
§ 2051. Unseaworthy vessel.
§ 2052. Seamen not to lose wages or lien by agreement.
§ 2053. Special agreement with seamen.
§ 2054. Wages depend on freightage.
§ 2055. When wages, etc., begin.
§ 2056. Wages, where voyage is broken up before departure.
§ 2057. Wrongful discharge.
§ 2058. Wages, when not lost by wreck.
§ 2059. Certificate.
§ 2060. Disabled seamen.
§ 2061. Maintenance of seamen during sickness.
§ 2062. Death on the voyage.
§ 2063. Theft, etc., forfeits wages.
§ 2064. Seamen cannot ship goods.
§ 2065. Embezzlement and injuries. (Repealed.)
§ 2066. Law governing seamen.

§ 2048. Mate, what. The mate of a ship is the officer next in rank to the master, and in case of the master's disability he must take his place. By so doing he does not lose any of his rights as mate. En. March 21, 1872.

§ 2049. Seamen, what. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code. En. March 21, 1872.

Cal. Rep. Cit. 134, 620.

§ 2050. Mate and seamen, how engaged and discharged. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage. En. March 21, 1872.

§ 2051. Unseaworthy vessel. A mate or seaman is not bound to go to sea in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had. En. March 21, 1872.

Seaworthiness defined: Post, sec. 2682.

§ 2052. Seamen not to lose wages or lien by agreement. A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is void. En. March 21, 1872.

Wages in case of loss of ship: Post, sec. 2058.

§ 2053. Special agreement with seamen. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor. En. March 21, 1872.

§ 2054. Wages depend on freightage. Except as hereinafter provided, the wages of seamen are due when, and so far only as, freightage is earned, unless the loss of freightage is owing to the fault of the owner or master. En. March 21, 1872.

§ 2055. When wages, etc., begin. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens. En. March 21, 1872.

§ 2056. Wages, where voyage is broken up before departure. Where a voyage is broken up before departure of a ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received. En. March 21, 1872.

§ 2057. Wrongful discharge. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by

the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages. En. March 21, 1872.

§ 2058. Wages, when not lost by wreck. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo, and stores. En. March 21, 1872.

§ 2059. Certificate. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo and stores, is presumptive evidence of the fact. En. March 21, 1872.

§ 2060. Disabled seamen. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding; but in case of a capture, a ratable deduction for salvage is to be made. En. March 21, 1872.

§ 2061. Maintenance of seamen during sickness. If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage. En. March 21, 1872.

§ 2062. Death on the voyage. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage. En. March 21, 1872.

§ 2063. Theft, etc., forfeits wages. Desertion of the ship, without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault. En. March 21, 1872.

§ 2064. Seamen cannot ship goods. A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master. En. March 21, 1872.
Cal. Rep. Cit. 113, 30.

§ 2065. Embezzlement and injuries. (Repealed.) En. March 21, 1872. Rep. 1873-4, 247.

§ 2066. Law governing seamen. The shipment of officers and seamen, and their rights and duties, are further regulated by acts of congress. En. March 21, 1872.

ARTICLE VI.

SHIP'S MANAGERS.

§ 2070. Manager, what.
§ 2071. Duties of manager.
§ 2072. Compensation.

§ 2070. Manager, what. The general agent for the owners, in respect to the care of a ship and freight, is called the manager. If he is a part owner, he is also called the managing owner. En. March 21, 1872.
Cal. Rep. Cit. 121, 569; 121, 570.

§ 2071. Duties of manager. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate, and crew, and supplies of provisions and stores. En. March 21, 1872.
Cal. Rep. Cit. 121, 569.

§ 2072. Compensation. A managing owner is presumed to have no right to compensation for his own services. En. March 21, 1872.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

§ 2078. Voluntary interference with property.
§ 2079. Salvage.

§ 2078. Voluntary interference with property. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete

such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue. En. March 21, 1872.

Employment without reward: Ante, secs. 1975 et seq.

Gratuitous carriers: Post, sec. 2089.

§ 2079. Salvage. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on Liens; but no claim for salvage, as such, can accrue against any vessel, or her freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved. En. March 21, 1872. Amd. 1873-4, 247.

TITLE VII.

CARRIAGE.

Chapter I. Carriage in General, §§ 2085-2090.
II. Carriage of Persons, §§ 2096-2104.
III. Carriage of Property, §§ 2110-2155.
IV. Carriage of Messages, §§ 2161-2162.
V. Common Carriers, §§ 2168-2209.

CHAPTER I.

CARRIAGE IN GENERAL.

§ 2085. Contract of carriage.
§ 2086. Different kinds of carriers.
§ 2087. Marine and inland carriers, what.
§ 2088. Carriers by sea.
§ 2089. Obligations of gratuitous carriers.
§ 2090. Obligations of gratuitous carrier who has begun to carry.

§ 2085. Contract of carriage. The contract of carriage is a contract for the conveyance of property, persons,

or messages, from one place to another. En. March 21, 1872.

Owner is liable for acts of driver: Pol. Code, sec, 2936.

Common carriers defined: Post, sec. 2168.

Carriage of property: Post, secs. 2110 et seq.

Carriage of persons: Post, secs. 2096 et seq.

Carriage of messages: Post, secs. 2161, 2162, and 2207 et seq.

§ 2086. Different kinds of carriers. Carriage is either:

1. Inland; or,

2. Marine. En. March 21, 1872.

§ 2087. Marine and inland carriers, what. Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inlaid carriers. En. March 21, 1872.

Inland carriers of property, rights and duties of: Post, secs. 2194 et seq.

Marine carriers, rights and duties of: Post, secs, 2148 et seq., 2197 et seq.

§ 2088. Carriers by sea. Rights and duties peculiar to carriers by sea are defined by acts of Congress. En. March 21, 1872.

See post, secs. 2197, 2198.

Rights and duties of carriers generally: Post, secs. 2180 et seq., 2194 et seq.

General average: Post, secs. 2148 et seq.

§ 2089. Obligations of gratuitous carriers. Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this title. En. March 21, 1872.

Employees without reward: Ante, secs. 1975 et seq.

Service without employment: Ante, secs. 2078 et seq.

§ 2090. Obligations of gratuitous carrier who has begun to carry. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage. En. March 21, 1872.

Compare with secs. 1975, 1976, ante.

CHAPTER II.

CARRIAGE OF PERSONS.

Article I. Gratuitous Carriage of Persons, § 2096.
II. Carriage for Reward, §§ 2100-2104.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

§ 2096. Degree of care required.

§ 2096. Degree of care required. A carrier of persons without reward must use ordinary care and diligence for their safe carriage. En. March 21, 1872.

Duty of gratuitous employee, generally: Ante, secs. 1975, 1976.

Carriers of persons, generally: Post, secs. 2180 et seq.

ARTICLE II.

CARRIAGE FOR REWARD.

§ 2100. General duties of carrier.
§ 2101. Vehicles.
§ 2102. Not to overload his vehicle.
§ 2103. Treatment of passengers.
§ 2104. Rate of speed and delays.

§ 2100. General duties of carrier. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill. En. March 21, 1872.

Cal. Rep. Cit. 63, 433; 89, 405; 137, 281; 147, 182.

Intoxicated driver, duty to discharge: See Pol. Code, sec. 2933.

Driver to fasten horses while standing: See Pol. Code, sec. 2933.

Negligence of driver, liability of owner for: See Pol. Code, sec. 2936.

§ 2101. Vehicles. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care. En. March 21, 1872.

Cal. Rep. Cit. 89, 406; 118, 653.

§ 2102. Not to overload his vehicle. A carrier of persons for reward must not overcrowd or overload his vehicle. En. March 21, 1872.

Railroad corporations to furnish accommodations: Ante, sec. 483.

§ 2103. Treatment of passengers. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention. En. March 21, 1872.

§ 2104. Rate of speed and delays. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route. En. March 21, 1872.

CHAPTER III.

CARRIAGE OF PROPERTY.

Article I. General Definitions, § 2110.
II. Obligations of the Carrier, §§ 2114-2122.
III. Bill of Lading, §§ 2126-2132.
IV. Freightage, §§ 2136-2144.
V. General Average, §§ 2148-2155.

ARTICLE I.

GENERAL DEFINITIONS.

§ 2110. Freight, consignor, etc., what.

§ 2110. Freight, consignor, etc., what. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee. En. March 21, 1872.

Freightage, when to be paid: Post, secs. 2136 et seq.

For definition of bill of lading, see post, sec. 2126.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

§ 2114. Care and diligence required of carriers.
§ 2115. Carrier to obey directions.
§ 2116. Conflict of orders.
§ 2117. Stowage, deviation, etc.
§ 2118. Delivery of freight.
§ 2119. Place of delivery.
§ 2120. Notice when freight not delivered.
§ 2121. When consignee does not accept.
§ 2122. When consignee cannot be found. (Repealed.)

§ 2114. Care and diligence required of carriers. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence. En. March 21, 1872.

Cal. Rep. Cit. 121, 568.

§ 2115. Carrier to obey directions. A carrier must comply with the directors of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer. En. March 21, 1872.

Employee's duty to obey employer: Ante, sec. 1981.

§ 2116. Conflict of orders. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own. En. March 21, 1872.

§ 2117. Stowage, deviation, etc. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight. En. March 21, 1872.

Cal. Rep. Cit. 125, 685.

§ 2118. Delivery of freight. A carrier of property must deliver to the consignee, at the place to which it is ad-

dressed, in the manner usual at that place. En. March 21, 1872.

Cal. Rep. Cit. 94, 178.

§ 2119. Place of delivery. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or, if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found. En. March 21, 1872.

Cal. Rep. Cit. 56, 486; 94, 178.

Delivery to connecting carrier: Ante, sec. 2201.

§ 2120. Notice when freight not delivered. If, for any reason, a carrier does not deliver freight to the consignee or his agent, personally, he must give notice to the consignee of its arrival, and keep the same in safety upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest postoffice. En. March 21, 1872. Am'd. 1873-4, 247.

Cal. Rep. Cit. 56, 485; 56, 486; 94, 170; 94, 177; 94, 178; 94, 179; 110, 356.

§ 2121. When consignee does not accept. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him. En. March 21, 1872. Am'd. 1873-4, 248.

§ 2122. When consignee cannot be found. (Repealed.) En. March 21, 1872. Rep. 1873-4, 248.

ARTICLE III.

BILL OF LADING.

§ 2126. Bill of lading, what.
§ 2127. Bill of lading negotiable.
§ 2128. Same.
§ 2129. Effect of bill of lading on rights, etc., of carrier.
§ 2130. Bills of lading to be given to consignor.
§ 2131. Carrier exonerated by delivery according to bill of lading.
§ 2132. Carrier may demand surrender of bill of lading before delivery.

§ 2126. Bill of lading, what. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. En. March 21, 1872.

Cal. Rep. Cit. 61, 416.

Issuing fictitious bill of lading: Pen. Code, sec. 577.

§ 2127. Bill of lading negotiable. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange. En. March 21, 1872.

Cal. Rep. Cit. 61, 416; 110, 358.

§ 2128. Same. When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof, by delivery conveys the same title as an indorsement. En. March 21, 1872.

Cal. Rep. Cit. 61, 416.

§ 2129. Effect of bill of lading on rights, etc., of carrier. A bill of lading does not alter the rights or obligations of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith. En. March 21, 1872.

Cal. Rep. Cit. 61, 416.

§ 2130. Bills of lading to be given to consignor. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for car-

riage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned. En. March 21, 1872.

Cal. Rep. Cit. 61, 416.

Duplicate receipts must be marked "duplicate": Pen. Code, sec. 580.

§ 2131. Carrier exonerated by delivery according to bill of lading. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer. En. March 21, 1872.

Cal. Rep. Cit. 61, 416; 110, 357.

See ante, sec. 2128.

§ 2132. Carrier may demand surrender of bill of lading before delivery. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight. En. March 21, 1872.

Cal. Rep. Cit. 61, 416.

ARTICLE IV.

FREIGHTAGE.

§ 2136. When freightage is to be paid.
§ 2137. Consignor, when liable for freightage.
§ 2138. Consignee, when liable.
§ 2139. Natural increase of freight.
§ 2140. Apportionment by contract.
§ 2141. Same.
§ 2142. Apportionment according to distance.
§ 2143. Freight carried further than agreed, etc.
§ 2144. Carrier's lien for freightage.

§ 2136. When freightage is to be paid. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee. En. March 21, 1872.

Freightage defined: Ante, sec. 2110.

Freight defined: Ante, sec. 2110.

§ 2137. Consignor, when liable for freightage. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier pro-

vides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor. En. March 21, 1872.

§ 2138. Consignee, when liable. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it. En. March 21, 1872.

§ 2139. Natural increase of freight. No freightage can be charged upon the natural increase of freight. En. March 21, 1872.

§ 2140. Apportionment by contract. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers. En. March 21, 1872.

§ 2141. Same. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract. En. March 21, 1872.

§ 2142. Apportionment according to distance. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offer to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage. En. March 21, 1872.

§ 2143. Freight carried further than agreed, etc. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival. En. March 21, 1872.

§ 2144. Carrier's lien for freightage. A carrier has a lien for freightage, which is regulated by the title on liens. En. March 21, 1872.

Liens generally: See post, secs. 2872 et seq.

Lien on passenger's luggage: Post, sec. 2191.

ARTICLE V.

GENERAL AVERAGE.

§ 2148. Jettison and general average, what.
§ 2149. Order of jettison.
§ 2150. By whom made.
§ 2151. Loss, how borne.
§ 2152. General average loss, how adjusted.
§ 2153. Values, how ascertained.
§ 2154. Things stowed on deck.
§ 2155. Application of the foregoing rules.

§ 2148. Jettison and general average, what. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss. En. March 21, 1872.

§ 2149. Order of jettison. A jettison must begin with the most bulky and least valuable articles, so far as possible. En. March 21, 1872.

§ 2150. By whom made. A jettison can be made only by authority of the master of the ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person. En. March 21, 1872.

§ 2151. Loss, how borne. The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed. En. March 21, 1872.

§ 2152. General average loss, how adjusted. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner

of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere. En. March 21, 1872.

§ 2153. Values, how ascertained. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution. En. March 21, 1872.

§ 2154. Things stowed on deck. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such voyage. En. March 21, 1872.

§ 2155. Application of the foregoing rules. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils. En. March 21, 1872.

CHAPTER IV.

CARRIAGE OF MESSAGES.

§ 2161. Obligation of carrier of messages.
§ 2162. Degree of care and diligence required.

§ 2161. Obligation of carrier of messages. A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided, the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation

may be charged for a messenger employed by the carrier. En. March 21, 1872. Am'd. 1873-4, 248; 1905, 627.

The change consists in the insertion of the words "or telephone" after "telegraph" in two places, thus making the section applicable to both telegraph and telephone companies.—Code Commissioner's Note.

Cal. Rep. Cit. 66, 586; 123, 430.

Neglect or postponement in delivery: See Pen. Code, sec. 638.

Order of transmitting messages: Post, sec. 2208.

Refusal to deliver message, penalty: Post, sec. 2209.

Carrier of telegraphic messages: See post, secs. 2207 et seq.

§ 2162. Degree of care and diligence required. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. En. March 21, 1872. Am'd. 1873-4, 249.

Cal. Rep. Cit. 66, 581; 66, 586; 123, 430; 130, 660.

CHAPTER V.

COMMON CARRIERS.

Article I. Common Carriers in General, §§ 2168-2177.
II. Common Carriers of Persons, §§ 2180-2191.
III. Common Carriers of Property, §§ 2194-2204.
IV. Common Carriers of Messages, §§ 2207-2209.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

§ 2168. Common carrier, what.
§ 2169. Obligation to accept freight.
§ 2170. Obligation not to give preference.
§ 2171. What preferences he must give.
§ 2172. Starting.
§ 2173. Compensation.
§ 2174. Obligations of carrier altered only by agreement.
§ 2175. Certain agreements void.
§ 2176. Effect of written contract.
§ 2177. Loss of valuable letters.

§ 2168. Common carrier, what. Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry. En. March 21, 1872, Am'd. 1873-4, 249.

Cal. Rep. Cit. 66, 581; 66, 586.

Carriage in general: Ante, secs. 2085 et seq.

Inland and marine carriers defined: Ante, sec. 2087.

Rights and liabilities of carriers: See post, under "Carriers of Persons and Carriers of Property," secs. 2180 et seq. and 2194 et seq.; and as to rights and duties of carriers by sea, see sec. 2088, ante.

§ 2169. Obligation to accept freight. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry. En. March 21, 1872.

Cal. Rep. Cit. 70, 178; 81, 298.

Refusal by railroad to carry passengers: Sec. 482, ante.

Want of room: See post, sec. 2185.

§ 2170. Obligation not to give preference. A common carrier must not give preference, in time, price, or otherwise, to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessel at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the district attorney of the county in the name of the people, and paid into the common school fund of the said county. En. March 21, 1872. Am'd. 1880, 2.

Cal. Rep. Cit. 70, 178.

Time-table.—For railroads, see ante, sec. 481, and generally, infra, sec. 2172.

§ 2171. What preferences he must give. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state. En. March 21, 1872.

§ 2172. Starting. A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel. En. March 21, 1872. Am'd. 1873-4, 249.

See sec. 2170, ante, and sec. 2196, post.

§ 2173. Compensation. A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry. En. March 21, 1872.

Lien for freight: Ante, sec. 2144.

Lien on luggage of passenger: Post, sec. 2191.

§ 2174. Obligations of carrier altered only by agreement. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract. En. March 21, 1872. Am'd. 1873-4, 249.

Cal. Rep. Cit. 120, 158; 120, 159.

Compare with sec. 2176, infra, and sec. 2200, post.

Limiting liability by special contract: Post, sec. 2175.

§ 2175. Certain agreements void. A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants. En. March 21, 1872.

Cal. Rep. Cit. 118, 689; 118, 690; 118, 691; 118, 695; 120, 158; 131, 589.

§ 2176. Effect of written contract. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same. En. March 21, 1872. Am'd. 1873-4, 249.

Cal. Rep. Cit. 66, 299; 101, 195; 113, 334; 118, 689; 118, 691; 131, 586; 131, 587; 131, 589.

§ 2177. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes,

bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents. En. Stats. 1873-4, 250.

Messages, carriage of: See sec. 2161, ante.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

§ 2180. Obligation to carry luggage.
§ 2181. Luggage, what. Bicycles.
§ 2182. Liability for luggage.
§ 2183. Luggage, how carried and delivered.
§ 2184. Obligation to provide vehicles.
§ 2185. Seats for passengers.
§ 2186. Regulations for conduct of business.
§ 2187. Fare, when payable.
§ 2188. Ejection of passengers.
§ 2189. Passenger who has not paid fare.
§ 2190. Fare not payable after ejection.
§ 2191. Carrier's lien.

§ 2180. Obligation to carry luggage. A common carrier of persons, unless his vehicle is fitted for he reception of persons exclusively, must receive and carry a reasonable amount of luggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger: provided, that if such carrier be a proprietor of a stage line, he need not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of luggage. En. March 21, 1872. Am'd. 1877-8, 87; 1905, 615.

The change consists in the substitution of the word "need" for "may." The present section would seem to prohibit a carrier by stage from receiving more than sixty pounds of luggage, wherein it was manifestly intended only to relieve him, at his election, from receiving a greater amount.—Code Commissioner's Note.

Cal. Rep. Cit. 70, 172; 85, 330.

§ 2181. Luggage, what. Bicycles. Luggage may consist of whatever the passenger takes with him for his personal use and convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or to the ultimate purpose of the journey. No crate, cover, or other protection shall be required for any bicycle carried as luggage, but no passenger shall be entitled to carry as luggage more than one bicycle. En. March 21, 1872. Am'd. 1897, 4.

Cal. Rep. Cit. 70, 173; 85, 330.

§ 2182. Liability for luggage. The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property. En. March 21, 1872.

Cal. Rep. Cit. 70, 173.

See sec. 2194, post.

Lien on baggage for fare: See secs. 2191, 3051, post.

§ 2183. Luggage, how carried and delivered. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination: and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk. En. March 21, 1872. Am'd. 1873-4, 250.

Cal. Rep. Cit. 70, 173.

Duty to furnish check: See sec. 479, ante.

§ 2184. Obligation to provide vehicles. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time. En. March 21, 1872.

See next section.

§ 2185. Seats for passengers. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows. En. March 21, 1872.

Compare with sec. 483, ante.

Duty to carry all who apply: See sec. 2169.

§ 2186. Regulations for conduct of business. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable. En. March 21, 1872.

Cal. Rep. Cit. 97, 464; 141, 732.

Rules and regulations: See ante, sec. 465, subds. 10, 11, and sec. 484.

§ 2187. Fare, when payable. A common carrier may demand the fare of passengers, either at starting or at any subsequent time. En. March 21, 1872.

Cal. Rep. Cit. 81, 298; 97, 464.

Penalty for overcharge: Pen. Code, sec. 525.

§ 2188. Ejection of passengers. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping-place or near some dwelling-house. En. March 21, 1872.

Cal. Rep. Cit. 81, 299; 97, 463; 141, 732; 145, 452.

Ejecting passenger for not paying fare: Sec. 487.

§ 2189. Passenger who has not paid fare. A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent in addition to the regular rate. En. March 21, 1872.

Ejecting passenger for nonpayment of fare: Ante, sec. 487.

§ 2190. Fare not payable after ejection. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare. En. March 21, 1872.

§ 2191. Carrier's lien. A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on Liens. En. March 21, 1872.

See general principle stated in regard to lien for work and labor performed about personalty, post, sec. 3051.

Lien for freight: Ante, sec. 2144.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

§ 2194. Liability of inland carriers for loss.
§ 2195. When exemptions do not apply.
§ 2196. Liability for delay.
§ 2197. Liability of marine carriers.
§ 2198. Same.
§ 2199. Perils of sea, what.
§ 2200. Consignor of valuables to declare their nature.
§ 2201. Delivery of freight beyond usual route.
§ 2202. Proof to be given in case of loss.
§ 2203. Carrier's services, other than carriage and delivery.
§ 2204. Sale of perishable property for freight.

§ 2194. Liability of inland carriers for loss. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 2118 to 2122, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;

2. The act of a public enemy of the United States, or of this state;

3. The act of the law; or,

4. Any irresistible superhuman cause. En. March 21, 1872.

Cal. Rep. Cit. 101, 194.

Inland carrier defined: See ante, sec. 2087.

Liability as warehouseman: See ante, sec. 2120.

Termination of liability: See ante, secs. 2118-2121.

Selling perishable articles: See infra, sec. 2204.

§ 2195. When exemptions do not apply. A common carrier is liable, even in the cases excepted by the last section, if his want of ordinary care exposes the property to the cause of the loss. En. March 21, 1872. Am'd. 1905, 615.

The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

§ 2196. Liability for delay. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence. En. March 21, 1872. Am'd. 1873-4, 251.

Cal. Rep. Cit. 101, 193.

§ 2197. Liability of marine carriers. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire. En. March 21, 1872.

§ 2198. Same. The liability of a common carrier by sea is further regulated by acts of Congress. En. March 21, 1872.

See, also, ante, sec. 2088.

§ 2199. Perils of sea, what. Perils of the sea are from:

1. Storms and waves;
2. Rocks, shoals, and rapids;
3. Other obstacles, though of human origin;
4. Changes of climate;
5. The confinement necessary at sea;
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea. En. March 21, 1872.

Cal. Rep. Cit. 76, 147; 76, 148.

§ 2200. Consignor of valuables to declare their nature. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading. En. March 21, 1872. Am'd. 1873-4, 251.

Cal. Rep. Cit. 84, 313; 84, 314; 118, 689.

§ 2201. Delivery of freight beyond usual route. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery. En. March 21, 1872.

Cal. Rep. Cit. 57, 463; 101, 190; 118, 651.

Delivery in general: See ante, secs. 2118, 2119.

§ 2203. Proof to be given in case of loss. If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor. En. March 21, 1872.

§ 2203. Carrier's services, other than carriage and delivery. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on Deposit and Service. En. March 21, 1872.

Deposit: See ante, secs. 1813 et seq.

Service: See ante, secs. 1965 et seq.

§ 2204. Sale of perishable property for freight. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage. En. Stats 1873-4, 251.

Penalty for overcharges: Pen. Code, sec. 525.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

§ 2207. Order of transmission of telegraphic messages.
§ 2208. Order in other cases.
§ 2209. Damages when message is refused or postponed.

§ 2207. Order of transmission of telegraphic messages. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;

3. Messages giving information relating to the sickness or death of any person;

4. Other messages in the order in which they were received. En. March 21, 1872.

Carriers of messages: See ante, secs. 2161, 2162.
Neglect or postponement in transmission: See Pen. Code, sec. 638.

§ 2208. Order in other cases. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this state, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received. En. March 21, 1872.
Delivery of messages: See ante, sec. 2161.

§ 2209. Damages when message is refused or postponed. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto. En. March 21, 1872.

TITLE VIII.

TRUST.

Chapter I. Trusts in General, §§ 2215-2244.
II. Trusts for the Benefit of Third Persons, §§ 2250-2289.

CHAPTER I.

TRUSTS IN GENERAL.

Article I. Nature and Creation of a Trust, §§ 2215-2224.
II. Obligations of Trustees, §§ 2228-2239.
III. Obligations of Third Persons, §§ 2243-2244.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

§ 2215. Trusts classified.
§ 2216. Voluntary trust, what.
§ 2217. Involuntary trust, what.
§ 2218. Parties to the contract.
§ 2219. What constitutes one a trustee.
§ 2220. For what purpose a trust may be created.
§ 2221. Voluntary trust, how created as to trustor.
§ 2222. How created as to trustee.
§ 2223. Involuntary trustee, who is.
§ 2224. Involuntary trust resulting from fraud, mistake, etc.

§ 2215. Trusts classified. A trust is either:
1. Voluntary; or,
2. Involuntary. En. March 21, 1872.

Cal. Rep. Cit. 58, 483; 132, 26. Subd. 1—138, 609.

§ 2216. Voluntary trust, what. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another. En. March 21, 1872.

Cal. Rep. Cit. 85, 445.

§ 2217. Involuntary trust, what. An involuntary trust is one which is created by operation of law. En. March 21, 1872.

Cal. Rep. Cit. 76, 471; 99, 590.
Involuntary trust: See post, secs. 2223, 2224.

§ 2218. Parties to the contract. The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary. En. March 21, 1872.

Cal. Rep. Cit. 82, 374.

§ 2219. What constitutes one a trustee. Everyone who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control. En. March 21, 1872.

Cal. Rep. Cit. 72, 559; 82, 373; 85, 446; 120, 323; 120, 678; 125, 683; 130, 357; 133, 493; 141, 61; 142, 69.

§ 2220. For what purpose a trust may be created. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on Uses and Trusts and on Transfers. En. March 21, 1872.

Cal. Rep. Cit. 58, 482; 58, 483; 71, 532; 108, 656; 123, 144.

§ 2221. Voluntary trust, how created as to trustor. Subject to the provisions of section 852, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,

2. The subject, purpose, and beneficiary of the trust. En. March 21, 1872.

Cal. Rep. Cit. 58, 483; 70, 452; 79, 625; 95, 167; 106, 656; 112, 284; 122, 25; 124, 421; 126, 191; 132, 27; 135, 367; 136, 96; 144, 318.

Creation of involuntary trust: See secs. 2223, 2224.

Trusts for benefit of third persons: See post, sec. 2251.

§ 2222. How created as to trustee. Subject to the provisions of section 852, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust. En. March 21, 1872.

Cal. Rep. Cit. 77, 339; 79, 625; 85, 446; 95, 167; 108, 656; 122, 25; 132, 27; 135, 367; 136, 155; 137, 636.

§ 2223. Involuntary trustee, who is. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner. En. March 21, 1872.

Cal. Rep. Cit. 58, 121; 58, 122; 107, 377; 118, 106.

Compensation of involuntary trustee: See sec. 275.

Involuntary trustee, who is: See post, sec. 2243.

§ 2224. Involuntary trust resulting from fraud, mistake, etc. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. En. March 21, 1872.

Cal. Rep. Cit. 55, 562; 58, 122; 58, 123; 67, 237; 71, 110; 76, 471; 77, 339; 85, 35; 85, 445; 86, 600; 98, 93; 103, 183; 107, 377; 112, 286; 118, 106; 126, 192; 131, 74; 132, 5; 133, 493; 141, 60; 141, 62; 142, 69; 144, 312.

Involuntary trustee, who is: Post, sec. 2243; compensation of: Post, sec. 2275.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

§ 2228. Trustee's obligation to good faith.
§ 2229. Trustee not to use property for his own profit.
§ 2230. Certain transactions forbidden.
§ 2231. Trustee's influence not to be used for his advantage.
§ 2232. Trustee not to assume a trust adverse to interest of beneficiary.
§ 2233. To disclose adverse interest.
§ 2234. Trustee guilty of fraud, when.
§ 2235. Presumption against trustees.
§ 2236. Trustee mingling trust property with his own.
§ 2237. Measure of liability for breach of trust.
§ 2238. Same.
§ 2239. Cotrustees, how far liable for each other.

§ 2228. Trustee's obligation to good faith. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. En. March 21, 1872.

Cal. Rep. Cit. 82, 374; 86, 629; 94, 647; 112, 61; 133, 493; 136, 463; 142, 641; 144, 606; 147, 732.

§ 2229. Trustee not to use property for his own profit. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner. En. March 21, 1872.

Cal. Rep. Cit. 82, 374; 93, 30; 97, 410; 109, 177; 112, 61; 120, 471; 124, 181; 130, 257; 131, 659; 133, 639; 145, 364; 146, 589; 147, 732.

Purchaser from trustee charged with the trust, when: Post, sec. 2243.

Presumption of undue influence on transactions between the trustee and beneficiary: Post, sec. 2235; violations of the duties of the trustee are fraudulent: Post, sec. 2234.

§ 2230. Certain transactions forbidden. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed. En. March 21, 1872.

Cal. Rep. Cit. 54, 106; 81, 319; 81, 323; 86, 629; 98, 177; 112, 61; 113, 237; 121, 285; 121, 287; 130, 257; 130, 433; 131, 659; 138, 95; 144, 606; 145, 363; 145, 365; 146, 410; 147, 732.

Duty to inform beneficiary: Sec. 2233, infra.

Undertaking inconsistent trust: Post, sec. 2232.

§ 2231. Trustee's influence not to be used for his advantage. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary. En. March 21, 1872.

Cal. Rep. Cit. 94, 461; 103, 101; 113, 237; 138, 95; 142, 69; 142, 641.

§ 2232. Trustee not to assume a trust adverse to interest of beneficiary. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interests of his beneficiary in the subject of the trust, without the consent of the latter. En. March 21, 1872.

Cal. Rep. Cit. 113, 237; 121, 328; 138, 95.

Compare ante, sec. 2230.

Trustee's duty to disclose adverse interest: Compare with sec. 2233, post.

Removal of trustee: Post, secs. 2282, 2283.

§ 2233. To disclose adverse interest. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed. En. March 21, 1872.

Cal. Rep. Cit. 55, 562; 86, 629; 113, 237.

§ 2234. Trustee guilty of fraud, when. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust. En. March 21, 1872.

Cal. Rep. Cit. 52, 406; 81, 319; 86, 629; 94, 461; 97, 410; 103, 102; 113, 237; 121, 328; 131, 79; 138, 95; 145, 363; 146, 589.

§ 2235. Presumption against trustee. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence. En. March 21, 1872.

Cal. Rep. Cit. 54, 440; 72, 559; 73, 161; 75, 529; 82, 374; 94, 461; 103, 100; 103, 101; 120, 323; 120, 324; 130, 357; 130, 358; 134, 172; 134, 173; 136, 463; 137, 183; 137, 693; 137, 695; 137, 697; 142, 69; 147, 508.

§ 2236. Trustee mingling trust property with his own. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use. En. March 21, 1872. Am'd. 1905, 615.

The change consists in the addition of the words "and for the value of its use" after "events."—Code Commissioner's Note.

Cal. Rep. Cit. 97, 202; 120, 536; 120, 537.

§ 2237. Measure of liability for breach of trust. A trustee who uses or disposes of the trust property, contrary to section 2229, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest. En. March 21, 1872.

Cal. Rep. Cit. 55, 563; 120, 471; 133, 639.
Liability for noninvestment of funds: See post, sec. 2262.
Degree of diligence requisite: Post, sec. 2259.

§ 2238. Same. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error. En. March 21, 1872.

Cal. Rep. Cit. 136, 445.

§ 2239. Cotrustees, how far liable for each other. A trustee is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others. En. March 21, 1872.

Cal. Rep. Cit. 87, 6; 120, 471; 142, 641.
Compare, also, this section with sec. 2268, post.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

§ 2243. Third person, when involuntary trustee.
§ 2244. When third person must see to application of trust property.

§ 2243. Third person, when involuntary trustee. Everyone to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration. En. March 21, 1872.

Cal. Rep. Cit. 55, 562; 96, 307; 105, 64; 134, 657.

§ 2244. When third person must see to application of trust property. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them. En. March 21, 1872.

Cal. Rep. Cit. 118, 106.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

Article I. Nature and Creation of the Trust, §§ 2250-2254.
II. Obligations of Trustees, §§ 2258-2263.
III. Powers of Trustees, §§ 2267-2269.
IV. Rights of Trustees, §§ 2273-2275.
V. Termination of the Trust, §§ 2279-2283.
VI. Succession or Appointment of New Trustees, §§ 2287-2289.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

§ 2250. Who are trustees within scope of this chapter.
§ 2251. Creation of trust.
§ 2252. Trustees appointed by court.
§ 2253. Declaration of trust.
§ 2254. Same.

§ 2250. Who are trustees within scope of this chapter. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in

which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such. En. March 21, 1872.

Cal. Rep. Cit. 137, 638; 140, 125; 145, 649.

§ 2251. Creation of trust. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission. En. March 21, 1872.

Cal. Rep. Cit. 61, 334; 91, 193; 95, 168; 110, 576; 122, 25.

Revoking trust, beneficiary's consent necessary: Post, sec. 2280.

Promise for benefit of third person: See ante, sec. 1559.

§ 2252. Trustees appointed by court. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section. En. March 21, 1872.

Cal. Rep. Cit. 91, 193; 142, 16.

§ 2253. Declaration of trust. The nature, extent, and object of a trust are expressed in the declaration of trust. En. March 21, 1872.

§ 2254. Same. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein. En. March 21, 1872.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

§ 2258. Trustees must obey declaration of trust.
§ 2259. Degree of care and diligence in execution of trust.
§ 2260. Duty of trustee as to appointment of successor.
§ 2261. Investment of money by trustee.
§ 2262. Interest, simple or compound, on omission to invest trust moneys.
§ 2263. Purchase by trustee of claims against trust fund.

§ 2258. Trustees must obey declaration of trust. A trustee must fulfill the purpose of the trust as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the con-

sent of all parties interested, in the same manner, and to the same extent, as an employee. En. March 21, 1872.

Cal. Rep. Cit. 58, 340; 142, 16.

Trustee must follow declaration of trust: Compare with the duty of employee, sec. 1981, ante.

Authority of trustee, generally: See, post, sec. 2267.

§ 2259. **Degree of care and diligence in execution of trust.** A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust. En. March 21, 1872.

Obligations of trustees: See, generally, ante, secs. 2228 et seq.

§ 2260. **Duty of trustee as to appointment of successor.** If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge. En. March 21, 1872.

Succession or appointment of new trustees: See post, secs. 2287 et seq.

§ 2261. **Investment of money by trustee.** A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. En. March 21, 1872.

Cal. Rep. Cit. 137, 638.

§ 2262. **Interest, simple or compound, on omission to invest trust moneys.** If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful. En. March 21, 1872.

Cal. Rep. Cit. 120, 471; 124, 573; 137, 638.

Trustee's liability for interest: Compare with sec. 2237, ante.

§ 2263. **Purchase by trustee of claims against trust fund.** A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be al-

lowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same. En. March 21, 1872.

Cal. Rep. Cit. 62, 376; 147, 732.

Purchasing debts against the trust estate prohibited: See ante, sec. 2230.

ARTICLE III.

POWERS OF TRUSTEES.

§ 2267. Trustee's powers as agent.
§ 2268. All must act.
§ 2269. Discretionary powers.

§ 2267. Trustee's powers as agent. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal. En. March 21, 1872.

Cal. Rep. Cit. 139, 594.

Powers to two or more trustees: See post, secs. 2268, 2288, and, ante, sec. 860.

Agent's acts binding principal: See post, secs. 2330-2339.

For what purposes trusts may be created: See ante, secs. 857, 2220.

§ 2268. All must act. Where there are several cotrustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides. En. March 21, 1872.

Survival of trust: See post, sec. 2288.

Liability for acts of cotrustee: See ante, sec. 2239.

Executors, when one or majority may act: See Code Civ. Proc., sec. 1355.

§ 2269. Discretionary powers. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. En. March 21, 1872.

Cal. Rep. Cit. 133, 648.

ARTICLE IV.

RIGHTS OF TRUSTEES.

§ 2273. Indemnification of trustee.
§ 2274. Compensation of trustee.
§ 2275. Involuntary trustee.

§ 2273. Indemnification of trustee. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate. En. March 21, 1872.

Cal. Rep. Cit. 145, 649.

Reimbursement on purchase of claims against estate. See ante, sec. 2263.

§ 2274. Compensation of trustee. Except as provided in section 1700 of the Code of Civil Procedure, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. En. March 21, 1872. Am'd. 1889, 334.

Cal. Rep. Cit. 56, 628.

Compensation of trustees the same as that of executor where the declaration of trust is silent: See sec. 1618, Code Civ. Proc.

Involuntary trustee entitled to no compensation, when: See sec. 2275.

§ 2275. Involuntary trustee. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. En. March 21, 1872.

Involuntary trustee defined: Secs. 2217, 2223, 2224, ante.

ARTICLE V.

TERMINATION OF THE TRUST.

§ 2279. Trust, how extinguished.
§ 2280. Not revocable.
§ 2281. Trustee's office, how vacated.
§ 2282. Trustee, how discharged.
§ 2283. Removal by superior court.

§ 2279. Trust, how extinguished. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful. En. March 21, 1872.

Cal. Rep. Cit. 70, 331; 73, 20; 84, 297; 113, 142; 124, 420.

§ 2280. Not revocable. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued. En. March 21, 1872.

Cal. Rep. Cit. 70, 453; 109, 331; 113, 142; 122, 26; 128, 9.

§ 2281. Trustee's office, how vacated. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge. En. March 21, 1872.

§ 2282. Trustee, how discharged. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he had capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the superior court. En. March 21, 1872. Am'd. 1883, 3.

Cal. Rep. Cit. 73, 20; 132, 542.

§ 2283. Removal by superior court. The superior court may remove any trustee who has violated or is unfit to

execute the trust, or may accept the resignation of a trustee. En. March 21, 1872. Am'd. 1880, 8.

Cal. Rep. Cit. 103, 250; 111, 635.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 2287. Vacant trusteeship filled by court.
§ 2288. Survivorship between cotrustees.
§ 2289. Superior court as trustee.

§ 2287. Vacant trusteeship filled by court. The superior court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment. En. March 21, 1872. Am'd. 1880, 8.

Cal. Rep. Cit. 70, 333; 91, 193.

§ 2288. Survivorship between cotrustees. On the death, renunciation, or discharge of one of several cotrustees, the trust survives to the others. En. March 21, 1872.

Cal. Rep. Cit. 70, 333.

This section is consistent with section 860; see, also, ante, sec. 2268.

Survival of guardianship: See ante, sec. 252.

§ 2289. Superior court as trustee. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the superior court of the county where the trust property, or some portion thereof, is situated must appoint another trustee, and direct the execution of the trust. The court may, in its discretion appoint the original number, or any less number of trustees. En. March 21, 1872. Am'd. 1880, 8.

Cal. Rep. Cit. 70, 333; 101, 149; 111, 636; 115, 251; 123, 352; 133, 649.

TITLE IX.

AGENCY.

Chapter I. Agency in General, §§ 2295-2356.
II. Particular Agencies, §§ 2362-2389.

CHAPTER I.

AGENCY IN GENERAL.

Article I. Definition of Agency, §§ 2295-2300.
II. Authority of Agents, §§ 2304-2326.
III. Mutual Obligations of Principals and Third Persons, §§ 2330-2339.
IV. Obligations of Agents to Third Persons, §§ 2342-2345.
V. Delegation of Agency, §§ 2349-2351.
VI. Termination of Agency, §§ 2355, 2356.

ARTICLE I.

DEFINITION OF AGENCY.

§ 2295. Agency, what.
§ 2296. Who may appoint, and who may be an agent.
§ 2297. Agents, general or special.
§ 2298. Agency, actual or ostensible.
§ 2299. Actual agency.
§ 2300. Ostensible agency.

§ 2295. **Agency, what.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency. En. March 21, 1872.

Cal. Rep. Cit. 66, 461; 75, 128; 82, 81; 123, 302; 131, 325; 140, 630.

Master and servant: See ante, secs. 2009 et seq.
Factors: See ante, secs. 2026 et seq.
Agents: See ante, secs. 2019-2022.

§ 2296. **Who may appoint, and who may be an agent.** Any person having capacity to contract may appoint an agent, and any person may be an agent. En. March 21, 1875.

§ 2297. **Agents, general or special.** An agent for a particular act or transaction is called a special agent. All others are general agents. En. March 21, 1872.

Cal. Rep. Cit. 82, 4; 123, 302; 124, 685; 131, 325.

§ 2298. Agency, actual or ostensible. An agency is either actual or ostensible. En. March 21, 1872.

Actual agent's authority: Post, secs. 2315, 2316, 2318, 2319.

Ostensible agent's authority: Post, secs, 2315, 2317-2319, 2334.

§ 2299. Actual agency. An agency is actual when the agent is really employed by the principal. En. March 21, 1872.

Cal. Rep. Cit. 93, 30; 139, 594.

§ 2300. Ostensible agency. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him. En. March 21, 1872.

Cal. Rep. Cit. 82, 81; 89, 634; 113, 679; 117, 421; 124, 227; 130, 269; 137, 100; 139, 594; 143, 504; 144, 350; 147, 170.

Compare, post, sec. 2317.

ARTICLE II.

AUTHORITY OF AGENTS.

§ 2304. What authority may be conferred.
§ 2305. Agent may perform acts required of principal by code.
§ 2306. Agent cannot have authority to defraud principal.
§ 2307. Creation of agency.
§ 2308. Consideration unnecessary.
§ 2309. Form of authority.
§ 2310. Ratification of agent's act.
§ 2311. Ratification of part of a transaction.
§ 2312. When ratification void.
§ 2313. Ratification not to work injury to third persons.
§ 2314. Rescission of ratification.
§ 2315. Measure of agent's authority.
§ 2316. Actual authority, what.
§ 2317. Ostensible authority, what.
§ 2318. Agent's authority as to persons having notice of restrictions upon it.
§ 2319. Agent's necessary authority.
§ 2320. Agent's power to disobey instructions.
§ 2321. Authority to be construed by its specific rather than by its general terms.
§ 2322. Exceptions to general authority.
§ 2323. What included in authority to sell personal property.
§ 2324. What included in authority to sell real property.
§ 2325. Authority of general agent to receive price of property.
§ 2326. Authority of special agent to receive price.

§ 2304. What authority may be conferred. An agent may be authorized to do any acts which his principal

might do, except those to which the latter is bound to give his personal attention. En. March 21, 1872.

Cal. Rep. Cit. 74, 589.

Delegation of authority by agent: Secs. 2349-2351.

§ 2305. Agent may perform acts required of principal by code. Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. En. March 21, 1872.

Cal. Rep. Cit. 74, 589.

§ 2306. Agent cannot have authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal. En. March 21, 1872.

Cal. Rep. Cit. 87, 262.

§ 2307. Creation of agency. An agency may be created and an authority may be conferred, by a precedent authorization or a subsequent ratification. En. March 21, 1872.

Cal. Rep. Cit. 89, 243; 119, 650; 124, 685; 130, 434; 132, 98; 141, 311; 143, 504.

§ 2308. Consideration unnecessary. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. En. March 21, 1872.

§ 2309. Form of authority. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. En. March 21, 1872.

Cal. Rep. Cit. 78, 632; 81, 541; 94, 549; 113, 227; 113, 229; 141, 311; 142, 403; 143, 366.

Statute of frauds: Ante, sec. 1624.

Power of attorney to execute mortgage: See post, sec. 2933.

§ 2310. Ratification of agent's act. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof. En. March 21, 1872.

Cal. Rep. Cit. 63, 142; 82, 6; 94, 549; 106, 600; 109, 40; 113, 227; 113, 230; 113, 231; 114, 461; 119, 650, 127, 271; 130, 416; 130, 434; 141, 311; 142, 403; 143, 366.

A ratification is not binding, and may be rescinded, if made without full knowledge of the facts: See post, sec. 2314.

Ratification of part: See post, sec. 2311.

§ 2311. Ratification of part of a transaction. Ratification of part of an indivisible transaction is a ratification of the whole. En. March 21, 1872.

Cal. Rep. Cit. 113, 231; 113, 236.

§ 2312. When ratification void. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act. En. March 21, 1872.

Cal. Rep. Cit. 63, 142; 106, 600; 107, 41.

§ 2313. Ratification not to work injury to third persons. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent. En. March 21, 1872.

Cal. Rep. Cit. 88, 281; 106, 600; 107, 41.

§ 2314. Rescission of ratification. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. En. March 21, 1872.

Cal. Rep. Cit. 63, 142; 113, 237; 113, 238; 146, 99.

§ 2315. Measure of agent's authority. An agent has such authority as the principal, actually or ostensibly, confers upon him. En. March 21, 1872.

Cal. Rep. Cit. 66, 64; 68, 162; 77, 453.

See infra, secs. 2317-2319, 2334; ante, sec. 2300.

Actual agent defined: Sec. 2299.

§ 2316. Actual authority, what. Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess. En. March 21, 1872.

Cal. Rep. Cit. 66, 64; 144, 112; 147, 170.

§ 2317. Ostensible authority, what. Ostensible authority is such as a principal, intentionally or by want of ordi-

nary care, causes or allows a third person to believe the agent to possess. En. March 21, 1872.

Cal. Rep. Cit. 66, 64; 66, 461; 82, 5; 87, 528; 95, 14; 108, 230; 113, 123; 137, 100; 141, 705; 143, 504; 147, 170.

Ostensible agent defined: Sec. 2300.

Estoppel from a subsequent ratification: See ante, secs. 2307, 2310, 2312-2314.

§ 2318. Agent's authority as to persons having notice of restrictions upon it. Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority. En. March 21, 1872.

Cal. Rep. Cit. 114, 399; 137, 100.

§ 2319. Agent's necessary authority. An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made. En. March 21, 1872.

Cal. Rep. Cit. 55, 424; 61, 341; 68, 162; 75, 162; 87, 529; 95, 12. Subd. 2—130, 104; 137, 100.

§ 2320. Agent's power to disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal. En. March 21, 1872.

Cal. Rep. Cit. 70, 453.

§ 2321. Authority to be construed by its specific rather than by its general terms. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned. En. March 21, 1872.

§ 2322. Exceptions to general authority. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article II, chapter I, of the last title. En. March 21, 1872.

Cal. Rep. Cit. 81, 319; 84, 314; 92, 112; 121, 328; 123, 383; 145, 363. Subd. 3—142, 641.

Defining scope of agency: See ante, sec. 2319, subd. 2.

Obligation of trustees: Ante, secs. 2228-2239.

§ 2323. What included in authority to sell personal property. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property. En. March 21, 1872.

Auctioneers, warranty by: See post, sec. 2362, subd. 3.

§ 2324. What included in authority to sell real property. An authority to sell and convey real property includes authority to give the usual covenants of warranty. En. March 21, 1872.

§ 2325. Authority of general agent to receive price of property. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. En. March 21, 1872.

Cal. Rep. Cit. 125, 614.

Agent to collect: Ante, sec. 2021.

§ 2326. Authority of special agent to receive price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards. En. March 21, 1872.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 2330. Principal, how affected by acts of agent within the scope of his authority.
§ 2331. Principal, when bound by incomplete execution of authority.
§ 2332. Notice to agent when notice to principal.
§ 2333. Obligation of principal when agent exceeds his authority.
§ 2334. For acts done under a merely ostensible authority.
§ 2335. When exclusive credit is given to agent.
§ 2336. Rights of person who deals with agent without knowledge of agency.
§ 2337. Instrument intended to bind principal does bind him.
§ 2338. Principal's responsibility for agent's negligence or omission.
§ 2339. Principal's responsibility for wrongs willfully committed by the agent.

§ 2330. Principal, how affected by acts of agent within the scope of his authority. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal. En. March 21, 1872.

Cal. Rep. Cit. 117, 422; 118, 321; 131, 7; 139, 594; 141, 705.

§ 2331. Principal, when bound by incomplete execution of authority. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise. En. March 21, 1872.

§ 2332. Notice to agent, when notice to principal. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith, and the exercise of ordinary care and diligence, to communicate to the other. En. March 21, 1872.

Cal. Rep. Cit. 103, 629; 141, 705.

§ 2333. Obligation of principal when agent exceeds his authority. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized. En. March 21, 1872.

§ 2334. For acts done under a merely ostensible authority. A principal is bound by acts of his agent, under

a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof. En. March 21, 1872. Am'd. 1905, 616.

The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

Cal. Rep. Cit. 117, 422; 130, 269; 143, 504.

Ostensible authority: See ante, sec. 2317.

§ 2335. When exclusive credit is given to agent. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible. En. March 21, 1872.

§ 2336. Rights of person who deals with agent without knowledge of agency. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency. En. March 21, 1872.

§ 2337. Instrument intended to bind principal does bind him. An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself. En. March 21, 1872.

§ 2338. Principal's responsibility for agent's negligence or omission. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal. En. March 21, 1872.

Cal. Rep. Cit. 52, 289; 118, 321; 119, 650; 138, 476; 138, 478.

See sec. 2384, post.

§ 2339. Principal's responsibility for wrongs willfully committed by the agent. A principal is responsible for no

other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service. En. March 21, 1872.

Cal. Rep. Cit. 119, 650.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 2342. Warranty of authority.
§ 2343. Agent's responsibility to third persons.
§ 2344. Obligation of agent to surrender property to third person.
§ 2345. Code provisions governing.

§ 2342. Warranty of authority. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes. En. March 21, 1872.

Damages for breach of warrant of authority: Post, sec. 3318.

§ 2343. Agent's responsibility to third persons. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature. En. March 21, 1872.

Master of ship personally liable: Post, sec. 2382.

§ 2344. Obligation of agent to surrender property to third person. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal. En. March 21, 1872.

Compare with sections on deposit: Ante, secs. 1822, 1825, 1826.

§ 2345. Code provisions governing. The provisions of this article are subject to the provisions of part I, division first, of this code. En. March 21, 1872.

See ante, secs. 25-42.

ARTICLE V.

DELEGATION OF AGENCY.

§ 2349. Agent's delegation of his powers.
§ 2350. Agent's unauthorized employment of subagent.
§ 2351. Subagent rightfully appointed, represents principal.

§ 2349. Agent's delegation of his powers. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;

2. When it is such as the agent cannot himself, and the subagent can lawfully perform;

3. When it is the usage of the place to delegate such powers; or,

4. When such delegation is specially authorized by the principal. En. March 21, 1872.

Cal. Rep. Cit. 92, 113; 102, 322; 110, 251; 124, 685; 124, 686; 124, 687. Subd. 4—124, 684.

§ 2350. Agent's unauthorized employment of subagent. If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter. En. March 21, 1872.

See ante, sec. 2022.

§ 2351. Subagent rightfully appointed, represents principal. A subagent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent. En. March 21, 1872.

ARTICLE VI.

TERMINATION OF AGENCY.

§ 2355. Termination of agency.
§ 2356. Same.

§ 2355. Termination of agency. An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agency [agent] to act as such. En. March 21, 1872.

Cal. Rep. Cit. 69, 230. Subd. 4—121, 328.

§ 2356. Same. Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:
1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract. En. March 21, 1872.

Cal. Rep. Cit. 70, 258; 70, 260; 75, 368; 89, 255; 92, 144; 131, 325.

CHAPTER II.

PARTICULAR AGENCIES.

Article I. Auctioneers, §§ 2362-2363.
II. Factors, §§ 2367-2369.
III. Shipmasters and Pilots, §§ 2373-2385.
IV. Ships' Managers, §§ 2388-2389.

ARTICLE I.

AUCTIONEERS.

§ 2362. Auctioneer's authority from the seller.
§ 2363. Auctioneer's authority from the bidder.

§ 2362. Auctioneer's authority from the seller. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller only as follows:
1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as are usually sold on credit at auction;
3. To warrant, in like manner with other agents to sell, according to section 2323;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the thing sold, upon payment of the price.
6. To collect the price; and,

7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes. En. March 21, 1872.

See Pol. Code, secs. 3284 et seq.

§ 2363. Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the title on Sale. En. March 21, 1872.

Concerning auctioneers: Pol. Code, secs. 3284-3324.

Entries by auctioneer: See ante, sec. 1798; and see generally the chapter on "Sale by Auction," ante, secs. 1792-1798.

ARTICLE II.

FACTORS.

§ 2367. Factor, what.
§ 2368. Actual authority of factor.
§ 2369. Ostensible authority.

§ 2367. Factor, what. A factor is an agent, as defined by section 2026. En. March 21, 1872.

§ 2368. Actual authority of factor. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured;

2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment. En. March 21, 1872.

Cal. Rep. Cit. 66, 461. Subd. 2—55, 424.

See post, sec. 2991.

§ 2369. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership. En. March 21, 1872.

Cal. Rep. Cit. 52, 589; 55, 424; 61, 420; 66, 460; 66, 461.

ARTICLE III.

SHIPMASTERS AND PILOTS.

§ 2373. Authority of shipmaster on behalf of shipowner.
§ 2374. Authority to borrow.
§ 2375. Authority on behalf of owners of cargo.
§ 2376. Power to make contracts.
§ 2377. Power to hypothecate.
§ 2378. Master's power to sell ship.
§ 2379. Master's power to sell cargo.
§ 2380. Authority to ransom ship.
§ 2381. Abandonment terminates master's power.
§ 2382. Personal liability for contracts concerning the ship.
§ 2383. Liability for acts of persons employed upon the ship.
§ 2384. Responsibility for negligence of pilot.
§ 2385. Obligations of shipowner to owner of cargo sold.

§ 2373. Authority of shipmaster on behalf of shipowner. The master of a ship is a general agent for its owner in all matters concerning the same. En. March 21, 1872.

Note.—This article is chiefly confined to defining the authority of shipmasters. His duties will be found in secs. 2034-2044, ante.

§ 2374. Authority to borrow. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay. En. March 21, 1872.

§ 2375. Authority on behalf of owners of cargo. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this article. En. March 21, 1872. Am'd. 1873-4, 251.

§ 2376. Power to make contracts. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port, may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage. En. March 21, 1872.

§ 2377. Power to hypothecate. The master of a ship may hypothecate the ship, freightage, and cargo, and sell

part of the cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others, except that the master may also sell the cargo or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition that, if left on board or reshipped, it would be entirely lost, or would seriously endanger the interests of its owners. En. March 21, 1872. Am'd. 1873-4, 252.

See post, secs. 3017 et seq.

§ 2378. **Master's power to sell ship.** When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions. En. March 21, 1872.

§ 2379. **Master's power to sell cargo.** The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary. En. March 21, 1872.

Compare post, sec. 2707.

§ 2380. **Authority to ransom ship.** The master of a ship in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo. En. March 21, 1872.

§ 2381. **Abandonment terminates master's power.** The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers. En. March 21, 1872.

§ 2382. **Personal liability for contracts concerning the ship.** Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto even when the owner is also liable. En. March 21, 1872.

Personal liability of agent: See ante, sec. 2343.

§ 2383. Liability for acts of persons employed upon the ship. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship. En. March 21, 1872.

§ 2384. Responsibility for negligence of pilot. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons. En. March 21, 1872.

See ante, sec. 2338.

§ 2385. Obligations of shipowner to owner of cargo sold. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship. En. Stats. 1873-4, 252.

ARTICLE IV.

SHIPS' MANAGERS.

§ 2388. What powers manager has.
§ 2389. What powers he has not.

§ 2388. What powers manager has. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages. En. March 21, 1872.

Cal. Rep. Cit. 61, 429; 109, 99.

Ships' managers: See ante, secs. 2070-2072.

§ 2389. What powers he has not. Without special authority, a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance. En. March 21, 1872.

TITLE X.

PARTNERSHIP.

Chapter I, Partnership in General, §§ 2395-2418.
II. General Partnership, §§ 2424-2471.
III. Special Partnership, §§ 2477-2510.
IV. Mining Partnership, §§ 2511-2520.

CHAPTER I.

PARTNERSHIP IN GENERAL.

Article I. What Constitutes a Partnership, §§ 2395-2397.
II. Partnership Property, §§ 2401-2406.
III. Mutual Obligations of Partners, §§ 2410-2413.
IV. Renunciation of Partnership, §§ 2417-2418.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

§ 2395. Partnership, what.
§ 2396. Shipowners.
§ 2397. Formation of partnership.

§ 2395. Partnership, what. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them. En. March 21, 1872.

Cal. Rep. Cit. 75, 569; 81, 15; 101, 507; 104, 304; 122, 12; 128, 126.

See section 2445, where the above question as to division of profits evidencing partnership is settled.

Dividing profits implies division of losses: Post, sec. 2404.

§ 2396. Shipowners. Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship. En. March 21, 1872.

Cal. Rep. Cit. 75, 569.

§ 2397. Formation of partnership. A partnership can be formed only by the consent of all the parties thereto, and therefore, no new partner can be admitted into a partnership without the consent of every existing member thereof. En. March 21, 1872.

See post, sec. 2516.

ARTICLE II.

PARTNERSHIP PROPERTY.

§ 2401. Partnership property, what.
§ 2402. Partner's interest in partnership property.
§ 2403. Partner's share in profits and losses.
§ 2404. When division of losses implied.
§ 2405. Partner may require application of partnership property to payment of debts.
§ 2406. What property is partnership property by presumption

§ 2401. Partnership property, what. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby. En. March 21, 1872.

Cal. Rep. Cit. 104, 305.

§ 2402. Partner's interest in partnership property. The interest of each member of a partnership extends to every portion of its property. En. March 21, 1872.

Cal. Rep. Cit. 104, 305; 123, 487; 147, 549.

§ 2403. Partner's share in profits and losses. In the absence of any agreement on the subject, the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss. En. March 21, 1872.

Cal. Rep. Cit. 56, 450; 104, 305.

Mining partnerships.—Each member shares in the profit and loss proportionately to the interest he holds: Post, sec. 2513.

§ 2404. When division of losses implied. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated. En. March 21, 1872.

Cal. Rep. Cit. 81, 15; 89, 534; 112, 12.

§ 2405. Partner may require application of partnership property to payment of debts. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him. En. March 21, 1872.

Cal. Rep. Cit. 58, 456.

§ 2406. **What property is partnership property by presumption.** Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property. En. March 21, 1872.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

§ 2410. Partners trustees for each other.
§ 2411. Good faith to be observed between them.
§ 2412. Mutual liability of partners to account.
§ 2413. No compensation for services to firm.

§ 2410. **Partners trustees for each other.** The relations of partners are confidential. They are trustees for each other within the meaning of chapter I of the title on Trusts, and their obligations as such trustees are defined by that chapter. En. March 21, 1872.

§ 2411. **Good faith to be observed between them.** In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. En. March 21, 1872.

Cal. Rep. Cit. 122, 460; 136, 463.

See post, secs. 2436 et seq.

§ 2412. **Mutual liability of partners to account.** Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf. En. March 21, 1872.

Cal. Rep. Cit. 78, 231.

Partners' acts bind firm: Post, sec. 2429.

§ 2413. **No compensation for services to firm.** A partner is not entitled to any compensation for services rendered by him to the partnership. En. March 21, 1872.

Cal. Rep. Cit. 68, 471; 135, 564.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

§ 2417. Renunciation of future profits exonerates from liability.
§ 2418. Effect of renunciation.

§ 2417. Renunciation of future profits exonerates from liability. A partner may exonerate himself from all future liability to a third person, on account of the partnership by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future. En. March 21, 1872.

Dissolution of partnership: See secs. 2449 et seq.

§ 2418. Effect of renunciation. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership. En. March 21, 1872.

CHAPTER II.

GENERAL PARTNERSHIP.

Article I. What is a General Partnership, § 2424.
II. Powers and Authority of Partners, §§ 2428-2431.
III. Mutual Obligations of Partners, §§ 2435-2438.
IV. Liability of Partners, §§ 2442-2445.
V. Termination of Partnership, §§ 2449-2454.
VI. Liquidation, §§ 2458-2462.
VII. Of the Use of Fictitious Names, §§ 2466-2471.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

§ 2424. General partnership what.

§ 2424. General partnership what. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership so far only as the general partners are concerned, is a general partnership. En. March 21, 1872.

Cal. Rep. Cit. 74, 419.

Special partnerships: See post, secs. 2477-2510.

Mining partnerships: See post, secs. 2511-2520.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

§ 2428. Power of majority of partners.
§ 2429. Authority of individual partner.
§ 2430. What authority partner has not.
§ 2431. Partner's acts in bad faith, when ineffectual.

§ 2428. Power of majority of partners. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business. En. March 21, 1872.

Cal. Rep. Cit. 78, 229.
Mining partnerships: Post, sec. 2520.

§ 2429. Authority of individual partner. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing. En. March 21, 1872.

Cal. Rep. Cit. 65, 560; 71, 502; 89, 534.
Common liability for losses: See sec. 2412.

§ 2430. What authority partner has not. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors;
2. To dispose of the goodwill of the business;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;
4. To do any act which would make it impossible to carry on the ordinary business of the partnership;
5. To confess a judgment;
6. To submit a partnership claim to arbitration;
7. To do any other act not within the scope of the preceding section. En. March 21, 1872.

Cal. Rep. Cit. 80, 321; 81, 17; 90, 87; 124, 432. Subd. 3—65, 560; 71, 502.

§ 2431. Partner's acts in bad faith, when ineffectual. A partner is not bound by any act of a copartner in bad

faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act. En. March 21, 1872.

Cal. Rep. Cit. 131, 7.

Good faith, duty to observe: See ante, sec. 2411.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

§ 2435. Profits of individual partner.
§ 2436. In what business partner may not engage.
§ 2437. In what he may engage.
§ 2438. Must account to firm for profits.

§ 2435. Profits of individual partner. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm. En. March 21, 1872.

Cal. Rep. Cit. 109, 132.

§ 2436. In what business partner may not engage. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it. En. March 21, 1872.

See post, sec. 2438.

§ 2437. In what he may engage. A partner may engage in any separate business, except as otherwise provided by the last two sections. En. March 21, 1872.

§ 2438. Must account to firm for profits. A general partner transacting business contrary to the provisions of this article may be required by any copartner to account to the partnership for the profits of such business. En. March 21, 1872.

Cal. Rep. Cit. 109, 132.

ARTICLE IV.

LIABILITY OF PARTNERS.

§ 2442. Liability of partners to third persons.
§ 2443. Liability for each other's acts as agents.
§ 2444. Liability of one held out as partner.
§ 2445. No one liable as partner unless held out as such.

§ 2442. Liability of partners to third persons. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners. En. March 21, 1872.

Cal. Rep. Cit. 63, 158; 69, 620; 89, 370; 89, 534.

§ 2443. Liability for each other's acts as agents. The liability of general partners for each other's acts is defined by the title on Agency. En. March 21, 1872.

Cal. Rep. Cit. 89, 534; 114, 399; 131, 7.
See ante, secs. 2429, 2430.

§ 2444. Liability of one held out as partner. Anyone permitting himself to be represented as a partner, general or special, is liable, as such to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership. En. March 21, 1872.

Cal. Rep. Cit. 122, 613; 122, 614.

§ 2445. No one liable as partner unless held out as such. No one is liable as a partner who is not such in fact, except as provided in the last section. En. March 21, 1872.

Cal. Rep. Cit. 122, 614.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

§ 2449. Duration of partnership.
§ 2450. Total dissolution of partnership.
§ 2451. Partial dissolution.
§ 2452. Partner entitled to dissolution.
§ 2453. Notice of termination.
§ 2454. Notice by change of name.

§ 2449. Duration of partnership. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law. En. March 21, 1872.

Dissolution of special partnership: See post, sec. 2509.

§ 2450. Total dissolution of partnership. A general partnership is dissolved as to all the partners:

1. By lapse of the time prescribed by agreement for its duration;

2. By the expressed will of any partner, if there is no such agreement;

3. By the death of a partner;

4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property;

5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,

6. By a judgment of dissolution. En. March 21, 1872.

Cal. Rep. Cit. 89, 550; 104, 305.

Partner's power after dissolution of firm: See post, secs. 2458 et seq.

§ 2451. Partial dissolution. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitled him to a judgment of dissolution. En. March 21, 1872.

§ 2452. Partner entitled to dissolution. A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss. En. March 21, 1872.

§ 2453. Notice of termination. The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a news-

paper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm. En. March 21, 1872.

Cal. Rep. Cit. 112, 383; 112, 383.

Compare sec. 2509, post.

§ 2454. **Notice by change of name.** A change of the partnership name, which plainly indicates the withdrawal of a partner is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication is not notice of the withdrawal of any partner. En. March 21, 1872.

ARTICLE VI.

LIQUIDATION.

§ 2458. Powers of partners after dissolution.
§ 2459. Who may act in liquidation.
§ 2460. Who may not act in liquidation.
§ 2461. Powers of partners in liquidation.
§ 2462. What partner may do in liquidation.

§ 2458. **Powers of partners after dissolution.** After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article. En. March 21, 1872.

Cal. Rep. Cit. 81, 18; 89, 551.

§ 2459. **Who may act in liquidation.** Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section. En. March 2, 1872.

Cal. Rep. Cit. 74, 420; 81, 18.

§ 2460. **Who may not act in liquidation.** If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof. En. March 21, 1872.

Cal. Rep. Cit. 74, 420; 93, 126.

§ 2461. **Powers of partners in liquidation.** A partner authorized to act in liquidation may collect, compromise,

or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property. En. March 21, 1872.

Cal. Rep. Cit. 74, 420; 81, 18; 84, 92; 84, 94.

§ 2462. What partner may do in liquidation. A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment when an action thereon is barred under the provisions of the Code of Civil Procedure. En. March 21, 1872. Am'd. 1873-4, 252.

Cal. Rep. Cit. 89, 551.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

§ 2466. Fictitious name; duties of those using.
§ 2467. Style of foreign partnership.
§ 2468. Certificate, execution, filing, etc.
§ 2469. New certificates on change of partner.
§ 2470. Register of such firms to be kept by county clerk.
§ 2471. Certified copies of register, and proof of publication, to be evidence.

§ 2466. Fictitious name; duties of those using. Except as otherwise provided in the next section every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county. En. March 21, 1872. Am'd. 1873-4, 253.

Cal. Rep. Cit. 56, 161; 56, 263; 56, 264; 64, 73; 67, 26; 67, 636; 70, 399; 74, 153; 74, 156; 74, 588; 81, 283; 82, 584; 85, 143; 88, 601; 88, 647; 89, 106; 92, 226; 93, 126; 101, 90; 118, 17; 135, 622; 135, 623.

§ 2467. Style of foreign partnership. A commercial or banking partnership, established and transacting business

in a place without the United States, may, without filing the certificate, or making the publication prescribed in the last section, use in this state the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business. En. March 21, 1872. Am'd. 1873-4, 253.

Cal. Rep. Cit. 67, 636.

§ 2468. Certificate, execution, filing, etc. The certificate filed with the clerk, as provided in section twenty-four hundred and sixty-six, must be signed by the partners, and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this act. Persons doing business as partners contrary to the provisions of this article shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required. En. March 21, 1872. Am'd. 1873-4, 253.

Cal. Rep. Cit. 56, 161; 56, 162; 56, 264; 61, 156; 64, 73; 64, 74; 67, 26; 67, 636; 70, 399; 74, 154; 74, 588; 77, 72; 81, 283; 89, 106; 93, 126; 101, 90; 111, 138; 118, 17; 135, 622; 135, 623.

§ 2469. New certificates on change of partner. On every change in the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the county clerk, and a new publication made, as required by this article on the formation of such partnership. En. March 21, 1872. Am'd. 1873-4, 254.

Cal. Rep. Cit. 93, 178.

§ 2470. Register of such firms to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership, and of each partner therein. En. March 21, 1872. Am'd. 1873-4, 254.

§ 2471. Certified copies of register, and proof of publication, to be evidence. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated. En. March 21, 1872.

Cal. Rep. Cit. 93, 178.

CHAPTER III.

SPECIAL PARTNERSHIP.

Article I. Formation of Partnership, §§ 2477-2485.
II. Powers, Rights, and Duties of the Partners, §§ 2489-2496.
III. Liability of Partners, §§ 2500-2503.
IV. Alteration and Dissolution of the Partnership, §§ 2507-2510.

ARTICLE I.

FORMATION OF PARTNERSHIP.

§ 2477. Formation of special partnership.
§ 2478. Of what to consist.
§ 2479. Certified statement.
§ 2480. Acknowledged and recorded. False statement.
§ 2481. Affidavit as to sums contributed.
§ 2482. No partnership until compliance.
§ 2483. Certificate to be published.
§ 2484. Affidavit of publication filed.
§ 2485. Renewal of special partnership.

§ 2477. Formation of special partnership. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance. En. March 21, 1872.

Cal. Rep. Cit. 74, 419; 128, 128.

Fraud in partnership matters a misdemeanor: Pen. Code, sec. 358.

§ 2478. Of what to consist. A special partnership may consist of one or more persons called general partners,

and one or more persons called special partners. En. March 21, 1872.

Cal. Rep. Cit. 128, 128.

§ 2479. Certified statement. Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which the partnership is to be conducted;

2. The general nature of the business intended to be transacted;

3. The names of all the partners, and their residences, specifying which are general and which are special partners;

4. The amount of capital which each special partner has contributed to the common stock;

5. The periods at which such partnership will begin and end. En. March 21, 1872.

§ 2480. Acknowledged and recorded. False statement. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the clerk's office, and the other recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate certified by the recorder in whose office it is recorded, must be filed in the clerk's office, and recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof. En. March 21, 1872.

§ 2481. Affidavit as to sums contributed. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate. En. March 21, 1872.

§ 2482. No partnership until compliance. No special partnership is formed until the provisions of the last five sections are complied with. En. March 21, 1872.

§ 2483. Certificate to be published. The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general. En. March 21, 1872.

§ 2484. Affidavit of publication filed. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated. En. March 21, 1872.

§ 2485. Renewal of special partnership. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation. En. March 21, 1872.

Cal. Rep. Cit. 128, 128.

Compare with sec. 2507, post.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

§ 2489. Who to do business.
§ 2490. Special partners may advise.
§ 2491. May loan money. Insolvency.
§ 2492. General partners may sue and be sued.
§ 2493. Withdrawal of capital.
§ 2494. Interest and profits.
§ 2495. Result of withdrawing capital.
§ 2496. Preferential transfer void.

§ 2489. Who to do business. The general partners only have authority to transact the business of a special partnership. En. March 21, 1872.

§ 2490. Special partners may advise. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management. En. March 21, 1872.

§ 2491. May loan money. Insolvency. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied. En. March 21, 1872.

§ 2492. General partners may sue and be sued. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners. En. March 21, 1872.

§ 2493. Withdrawal of capital. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance. En. March 21, 1872.

See sec. 2495, post.

§ 2494. Interest and profits. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses. En. March 21, 1872.

§ 2495. Result of withdrawing capital. If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner. En. March 21, 1872.

See sec. 2493.

§ 2496. Preferential transfer void. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void. En. March 21, 1872.

ARTICLE III.

LIABILITY OF PARTNERS.

§ 2500. Liability of partners.
§ 2501. Of special partners.
§ 2502. Liability for unintentional act.
§ 2503. Who may question existence of special partnership.

§ 2500. Liability of partners. The general partners in a special partnership are liable to the same extent as partners in a general partnership. En. March 21, 1872.

§ 2501. Of special partners. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner, to all creditors of the firm;

2. If he has willfully interfered with the business of the firm, except as permitted in article II of this chapter, he is liable in like manner, or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of article II of this chapter, he is liable in like manner. En. March 21, 1872.

False certificate: See secs. 2480 and 2482, ante.

§ 2502. Liability for unintentional act. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice. En. March 21, 1872.

§ 2503. Who may question existence of special partnership. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterward charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been

made by the partners, in good faith, to form a special partnership in the manner required by article I of this chapter. En. March 21, 1872.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

§ 2507. When special partnership becomes general.
§ 2508. How new special partners may be admitted.
§ 2509. Dissolution of special partnerships. Notice.
§ 2510. The name of a special partner not used, unless.

§ 2507. When special partnership becomes general. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in article I of this chapter for the publication of the certificate. En. March 21, 1872.

§ 2508. How new special partners may be admitted. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners verified, acknowledged, or proved, according to the provisions of article I of this chapter, and filed with the county clerk and recorder with whom the original certificate of the partnership was filed. En. March 21, 1872.

§ 2509. Dissolution of special partnerships. Notice. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk and recorder with whom the original certificate was recorded, and published one in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business. En. March 21, 1872.

Dissolution of general partnership: See ante, secs. 2450 et seq.

§ 2510. The name of a special partner not used, unless. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited." En. March 21, 1872.

CHAPTER IV.

MINING PARTNERSHIPS.

§ 2511. When a mining partnership exists.
§ 2512. Express agreement not necessary to constitute.
§ 2513. Profits and losses, how shared.
§ 2514. Lien of partners.
§ 2515. Mine—Partnership property.
§ 2516. Partnership not dissolved by sale of interest.
§ 2517. Purchaser takes, subject to liens, unless, etc.
§ 2518. Takes with notice of lien, when.
§ 2519. Contract in writing, when binding.
§ 2520. Owners of majority of shares govern.

§ 2511. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same. En. March 21, 1872.

Cal. Rep. Cit. 81, 16; 89, 372; 107, 510; 121, 215; 127, 521; 128, 127.

§ 2512. Express agreement not necessary to constitute. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom. En. March 21, 1872.

Cal. Rep. Cit. 89, 372; 107, 511; 127, 521.

§ 2513. Profits and losses, how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares. En. March 21, 1872.

Cal. Rep. Cit. 89, 371.

§ 2514. Lien of partners. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced

by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not. En. March 21, 1872.

Cal. Rep. Cit. 66, 578; 89, 371; 144, 773.

Corresponding sections as to general partners: See sec. 2405, ante; see also secs. 2517, 2518, post.

§ 2515. Mine—Partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. En. March 21, 1872.

§ 2516. Partnership not dissolved by sale of interest. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership. En. March 21, 1872.

Termination of partnership generally: See secs. 2449 et seq.

§ 2517. Purchaser takes, subject to liens, unless, etc. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien. En. March 21, 1872.

§ 2518. Takes with notice of lien, when. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership. En. March 21, 1872.

§ 2519. Contract in writing, when binding. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof. En. March 21, 1872.

§ 2520. Owners of majority of shares govern. The decision of the members owning a majority of the shares or

interests in a mining partnership binds it in the conduct of its business. En. March 21, 1872.

Cal. Rep. Cit. 89, 371.

Majority of members in general partnerships: Sec. 2428, ante.

TITLE XI.

INSURANCE.

Chapter I. Insurance in General, §§ 2527-2649.
II. Marine Insurance, §§ 2655-2746.
III. Fire Insurance, §§ 2752-2757.
IV. Life and Health Insurance, §§ 2762-2766.

CHAPTER I.

INSURANCE IN GENERAL.

Article I. Definition of Insurance, § 2527.
II. What may be Insured, §§ 2531-2534.
III. Parties, §§ 2538-2542.
IV. Insurable Interest, §§ 2546-2558.
V. Concealment and Representations, §§ 2561-2583.
VI. The Policy, §§ 2586-2599.
VII. Warranties, §§ 2603-2612.
VIII. Premium, §§ 2616-2622.
IX. Loss, §§ 2626-2629.
X. Notice of Loss, §§ 2633-2637.
XI. Double Insurance, §§ 2641-2642.
XII. Reinsurance, §§ 2646-2649.

ARTICLE I.

DEFINITION OF INSURANCE.

§ 2527. Insurance, what.

§ 2527. Insurance, what. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event. En. March 21, 1872.

Cal. Rep. Cit. 107, 330; 125, 611.

Insurance corporations: See secs. 414 et seq.

Office and duties of insurance commissioners: Pol. Code, secs. 594-634. Destruction of insured property: Pen. Code, sec. 548. Arson: Pen. Code, secs. 447-455.

ARTICLE II.

WHAT MAY BE INSURED.

§ 2531. What events may be insured against.
§ 2532. Insurance of lottery or lottery prize unauthorized.
§ 2533. Usual kinds of insurance.
§ 2534. All subject to this chapter.

§ 2531. What events may be insured against. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter. En. March 21, 1872.

Cal. Rep. Cit. 107, 330.

Insurable interest: See post, secs. 2546 et seq., 2659 et seq.

§ 2532. Insurance of lottery or lottery prize unauthorized. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize. En. March 21, 1872.

Lotteries: Pen. Code, secs. 324, 326.

§ 2533. Usual kinds of insurance. The most usual kinds of insurance are:

1. Marine insurance;
2. Fire insurance;
3. Life insurance;
4. Health insurance, and
5. Accident insurance: En. March 21, 1872.

Marine insurance: See post, secs. 2655 et seq.

Fire insurance: See post, secs. 2752 et seq.

Life and health insurance: See post, secs. 2762 et seq.

§ 2534. All subject to this chapter. All kinds of insurance are subject to the provisions of this chapter. En. March 21, 1872.

ARTICLE III.

PARTIES TO THE CONTRACT.

§ 2538. Designation of parties.
§ 2539. Who may insure.
§ 2540. Who may be insured.
§ 2541. Assignment to mortgagee of thing insured.
§ 2542. New contract between insurer and assignee.

§ 2538. Designation of parties. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured. En. March 21, 1872.

§ 2539. Who may insure. Anyone capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents, and others. En. March 21, 1872.

§ 2540. Who may be insured. Anyone except a public enemy may be insured. En. March 21, 1872.

§ 2541. Assignment to mortgagee of thing insured. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee, with the same effect as if it had been performed by the mortgagor. En. March 21, 1872. Am'd. 1905, 616.

The change consists in the addition of the clause following "mortgagee," and is designed to authorize a mortgagee in whose favor insurance is effected, to perform for the mortgagor any acts to be performed by him, with the same effect as if performed by the mortgagor.—Code Commissioner's Note.

Cal. Rep. Cit. 128, 19; 136, 547.

§ 2542. New contract between insurer and assignee. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights. En. March 21, 1872.

ARTICLE IV.

INSURABLE INTEREST.

§ 2546. Insurable interest, what.
§ 2547. In what may consist.
§ 2548. Interest of carrier or depositary.
§ 2549. Mere expectancies.
§ 2550. Measure of interest in property.
§ 2551. Insurance without interest illegal.
§ 2552. When interest must exist.
§ 2553. Effect of transfer.
§ 2554. Transfer after loss.
§ 2555. Exception in the case of several subjects in one policy.
§ 2556. In case of the death of the insurer.
§ 2557. In the case of transfer between cotenants.
§ 2558. Policy, when void.

§ 2546. Insurable interest, what. Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest. En. March 21, 1872.

Partner: See post, sec. 2590.

Bailees, etc.: See sec. 2548, infra.

Future products insurable: See sec. 2549, infra.

Life insurance: See post, secs. 2762, 2763.

Stating insurer's interests in policy: See post, secs. 2568, 2587.

§ 2547. In what may consist. An insurable interest in property may consist in:

1. An existing interest;

2. An inchoate interest founded on an existing interest; or,

3. An expectancy, coupled with an existing interest in that out of which the expectancy arises. En. March 21, 1872.

§ 2548. Interest of carrier or depositary. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value. En. March 21, 1872.

§ 2549. Mere expectancies. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable. En. March 21, 1872.

§ 2550. Measure of interest in property. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof. En. March 21, 1872.

See also next section.

Measure of indemnity in marine insurance: See post, sec. 2736.

§ 2551. Insurance without interest, illegal. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void. En. March 21, 1872.

§ 2552. When interest must exist. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime. En. March 21, 1872.

§ 2553. Effect of transfer. Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person. En. March 21, 1872.

Transfer by partner: See sec. 2557, infra.

Transfer by operation of law: Sec. 2556, infra.

Transfer of thing insured does not transfer policy: See post, sec. 2593.

Transfer of life insurance policy: See post, sec. 2764.

§ 2554. Transfer after loss. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss. En. March 21, 1872.

§ 2555. Exception in the case of several subjects in one policy. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others. En. March 21, 1872.

§ 2556. In case of the death of the insurer. A change of interest, by will or succession, on the death of the in-

sured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured. En. March 21, 1872.

§ 2557. In the case of transfer between cotenants. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured. En. March 21, 1872.

Insurance by partner or cotenant: See post, sec. 2590.

§ 2558. Policy, when void. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void. En. Stats. 1873-4, 255.

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

§ 2561. Concealment, what.
§ 2562. Effect of concealment.
§ 2563. What must be disclosed.
§ 2564. Matters which need not be communicated without inquiry.
§ 2565. Test of materiality.
§ 2566. Matters which each is bound to know.
§ 2567. Waiver of communication.
§ 2568. Interest of insured.
§ 2569. Fraudulent warranty.
§ 2570. Matters of opinion.
§ 2571. Representation, what.
§ 2572. When made.
§ 2573. How interpreted.
§ 2574. Representations as to future.
§ 2575. How may affect policy.
§ 2576. When may be withdrawn.
§ 2577. Time intended by representation.
§ 2578. Representing information.
§ 2579. Falsity.
§ 2580. Effect of falsity.
§ 2581. Materiality.
§ 2582. Application of provisions of this article.
§ 2583. Right to rescind.

§ 2561. Concealment, what. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment. En. March 21, 1872.

Cal. Rep. Cit. 80, 443.

Concealment.—"Party" refers to either party to the contract: See sec. 2563, infra.

Concealment in marine insurance: See post, secs. 2669 et seq.

§ 2562. Effect of concealment. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance. En. March 21, 1872.

Cal. Rep. Cit. 80, 443.

§ 2563. What must be disclosed. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty. En. March 21, 1872.

Cal. Rep. Cit. 80, 443.

§ 2564. Matters which need not be communicated without inquiry. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy, and which are not otherwise material. En. March 21, 1872.

Cal. Rep. Cit. 125, 350.

Waiver of communication: See infra, sec. 2567.

Facts covered by warranty: See infra, sec. 2569.

§ 2565. Test of materiality. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries. En. March 21, 1872.

Materiality of representation: See infra, sec. 2581.

§ 2566. Matters which each is bound to know. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade. En. March 21, 1872.

§ 2567. Waiver of communication. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated. En. March 21, 1872.

§ 2568. Interest of insured. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section 2587. En. March 21, 1872.

§ 2569. Fraudulent warranty. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind. En. March 21, 1872.

§ 2570. Matters of opinion. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question. En. March 21, 1872.

§ 2571. Representation, what. A representation may be oral or written. En. March 21, 1872.

Representations in marine insurance: Secs. 2676, 2677, post.

§ 2572. When made. A representation may be made at the same time with issuing the policy, or before it. En. March 21, 1872.

Warranties: See secs. 2603, 2604, post.

§ 2573. How interpreted. The language of a representation is to be interpreted by the same rules as the language of contracts in general. En: March 21, 1872.

Interpretation of contracts: See ante, sec. 1635.

§ 2574. Representations as to future. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation. En. March 21, 1872.

§ 2575. How may affect policy A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty. En. March 21, 1872.

§ 2576. **When may be withdrawn.** A representation may be altered or withdrawn before the insurance is effected, but not afterwards. En. March 21, 1872.

§ 2577. **Time intended by representation.** The completion of the contract of insurance is the time to which a representation must be presumed to refer. En. March 21, 1872.

§ 2578. **Representing information.** When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence. En. March 21, 1872.

§ 2579. **Falsity.** A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. En. March 21, 1872.

§ 2580. **Effect of falsity.** If a representation is false in a material point whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. En. March 21, 1872.

Cal. Rep. Cit. 86, 251; 89, 208.

§ 2581. **Materiality.** The materiality of a representation is determined by the same rule as the materiality of a concealment. En. March 21, 1872.

Materiality of representation, how determined: See ante, sec. 2565.

§ 2582. **Application of provisions of this article.** The provisions of this article apply as well to a modification of a contract of insurance as to its original formation. En. March 21, 1872.

§ 2583. **Right to rescind.** Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract. En. Stats. 1873-4, 255.

Cal. Rep. Cit. 89, 208.

See sec. 2609, post.

ARTICLE VI.

THE POLICY.

§ 2586. Policy, what.
§ 2587. What must be specified in a policy.
§ 2588. Whose interest is covered.
§ 2589. Insurance by agent or trustee.
§ 2590. Insurance by part owner.
§ 2591. General terms.
§ 2592. Successive owners.
§ 2593. Transfer of the thing insured.
§ 2594. Open and valued policies.
§ 2595. Open policy, what.
§ 2596. Valued policy, what.
§ 2597. Running policy, what.
§ 2598. Effect of receipt.
§ 2599. Agreement not to transfer.

2586. Policy, what. The written instrument, in which a contract of insurance is set forth, is called a policy of insurance. En. March 21, 1872.

§ 2587. What must be specified in a policy. A policy of insurance must specify:

1. The parties between whom the contract is made;

2. The rate of premium;

3. The property or life insured;

4. The interest of the insured in property insured, if he is not the absolute owner thereof;

5. The risks insured against; and,

6. The period during which the insurance is to continue. En. March 21, 1872.

Cal. Rep. Cit. 98, 7; 107, 330; 111, 411; 111, 412; 111, 413.

§ 2588. Whose interest is covered. When the name of the person intended to be insured is specified in a policy, it can be supplied only to his own proper interest. En. March 21, 1872.

Stating interest of insured: See ante, sec. 2568.

Insurable interest generally: See ante, sec. 2546.

§ 2589. Insurance by agent or trustee. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy. En. March 21, 1872.

§ 2590. Insurance by part owner. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the point or common interest. En. March 21, 1872.

Transfer of policy from one partner to another: See ante, sec. 2557.

§ 2591. General terms. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. En. March 21, 1872.

Cal. Rep. Cit. 123, 224.

§ 2592. Successive owners. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured. En. March 21, 1872.

§ 2593. Transfer of the thing insured. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured. En. March 21, 1872.

Transfer of interest: See generally, on alienation of interest, secs. 2553 et seq.

§ 2594. Open and valued policies. A policy is either open or valued. En. March 21, 1872.

§ 2595. Open policy, what. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. En. March 21, 1872.

§ 2596. Valued policy, what. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum. En. March 21, 1872.

Cal. Rep. Cit. 98, 7.

Valuation in marine insurance: See post, sec. 2736.

§ 2597. Running policy, what. A running policy is one which contemplates successive insurances and which pro-

vides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. En. March 21, 1872.

§ 2598. Effect of receipt. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid. En. March 21, 1872.

Cal. Rep. Cit. 83, 255; 83, 259; 132, 70; 132, 72.

Premiums in general: See secs. 2616 et seq., post.

§ 2599. Agreement not to transfer. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void. En. March 21, 1872.

ARTICLE VII.

WARRANTIES.

§ 2603. Warranty, express or implied.
§ 2604. Form.
§ 2605. Express warranties to be in policy.
§ 2606. Past, present, and future warranties.
§ 2607. Warranty as to past or present.
§ 2608. Warranty as to the future.
§ 2609. Performance excused.
§ 2610. What acts avoid the policy.
§ 2611. Policy may provide for avoidance.
§ 2612. Breach without fraud.

§ 2603. Warranty, express or implied. A warranty is either express or implied. En. March 21, 1872.

Cal. Rep. Cit. 122, 599.

See sec. 2605, infra.

Implied warranties in marine insurance: See secs. 2681 et seq., post.

§ 2604. Form. No particular form of words is necessary to create a warranty. En. March 21, 1872.

§ 2605. Express warranties to be in policy. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy,

as making a part of it. En. March 21, 1872. Am'd. 1873-4, 255.

Cal. Rep. Cit. 89, 208.

Representations: See ante, secs, 2571 et seq.

§ 2606. Past, present and future warranties. A warranty may relate to the past, the present, the future, or to any or all of these. En. March 21, 1872.

§ 2607. Warranty as to past or present. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof. En. March 21, 1872.

Cal. Rep. Cit. 66, 363; 67, 440; 88, 504.

§ 2608. Warranty as to the future. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. En. March 21, 1872.

Cal. Rep. Cit. 137, 597.

§ 2609. Performance excused. When before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy. En. March 21, 1872. Am'd. 1873-4, 255.

Rescinding contract of insurance: See sec. 2583, supra, as to the right when the right to rescind may be exercised.

§ 2610. What acts avoid the policy. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind. En. March 21, 1872.

Cal. Rep. Cit. 86, 251.

This section distinguishes between material and immaterial warranties. Heretofore all warranties were deemed material. The insurer can, however, protect himself, under section 2611, infra, by declaring in the policy that violation of an immaterial warranty will avoid the contract.

§ 2611. Policy may provide for avoidance. A policy may declare that a violation of specified provisions thereof

shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy. En. March 21, 1872.

Cal. Rep. Cit. 66, 363; 67, 441; 112, 559; 122, 599; 143, 291.

§ 2612. Breach without fraud. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk. En. March 21, 1872.

Cal. Rep. Cit. 67, 440.

Breach of warranty without fraud, return of premium: See sec. 2619, post.

ARTICLE VIII.

PREMIUM.

§ 2616. When premium is earned.
§ 2617. Return of premium.
§ 2618. When not allowed.
§ 2619. Return for fraud.
§ 2620. Over-insurance by several insurers.
§ 2621. Contribution.
§ 2622. Proportionate contribution.

§ 2616. When premium is earned. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. En. March 21, 1872.

Receipt in policy, how far conclusive of payment: See sec. 2598, ante.

Cal. Rep. Cit. 86, 252.

§ 2617. Return of premium. A person insured is entitled to a return of premium, as follows:

1. To the whole premium if no part of his interest in the thing insured be exposed to any of the perils insured against.

2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. En. March 21, 1872. Am'd. 1873-4, 256.

Cal. Rep. Cit. 86, 251; 86, 252.

Return for fraud: See sec. 2619, infra.

§ 2618. When not allowed. If a peril insured against has existed, and the insurer has been liable for any per-

iod, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned. En. March 21, 1872. Am'd. 1873-4, 256.

§ 2619. Return for fraud. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy. En. March 21, 1872.

Cal. Rep. Cit. 86, 251.

§ 2620. Over-insurance by several insurers. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk. En. March 21, 1872.

Double insurance defined: See post, sec. 2641.

§ 2621. Contribution. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies. En. March 21, 1872.

Contribution in cases of double insurance: See post, sec. 2642.

§ 2622. Proportionate contribution. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable. En. March 21, 1872.

ARTICLE IX.

LOSS.

§ 2626. Perils, remote and proximate.
§ 2627. Loss incurred in rescue from peril.
§ 2628. Excepted perils.
§ 2629. Negligence and fraud.

§ 2626. **Perils, remote and proximate.** An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause. En. March 21, 1872.

Negligence of insured: See sec. 2629, infra.

Perils of the sea, what included: See sec. 2199, ante.

§ 2627. **Loss incurred in rescue from peril.** An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against. En. March 21, 1872.

§ 2628. **Excepted perils.** When a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted. En. March 21, 1872.

§ 2629. **Negligence and fraud.** An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others. En. March 21, 1872. Am'd. 1873-4, 256.

Cal. Rep. Cit. 67, 28; 76, 237; 112. 557; 112, 558; 112, 559.

ARTICLE X.

NOTICE OF LOSS.

§ 2633. Notice of loss.
§ 2634. Preliminary proofs.
§ 2635. Waivers of defects in notice, etc.
§ 2636. Waiver of delay.
§ 2637. Certificate, when dispensed with.

§ 2633. **Notice of loss.** In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance without unnecessary delay. En. March 21, 1872. Am'd. 1873-4, 256.

§ 2634. Preliminary proofs. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. En. March 21, 1872.

§ 2635. Waivers of defects in notice, etc. All defects in a notice of loss, or in preliminary proof thereof which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived. En. March 21, 1872.

Cal. Rep. Cit. 98, 243.

§ 2636. Waiver of delay. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground. En. March 21, 1872.

§ 2637. Certificate, when dispensed with. If a policy requires, by way of preliminary proof of loss the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified. En. March 21, 1872.

Cal. Rep. Cit. 88, 157.

Presenting false proofs for policies: Pen. Code, sec. 549.

ARTICLE XI.

DOUBLE INSURANCE.

§ 2641. Double insurance.
§ 2642. Contribution in case of double insurance.

§ 2641. Double insurance. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest. En. March 21, 1872.

§ 2642. Contribution in case of double insurance. In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably. En. March 21, 1872. Am'd. 1873-4, 257.

Return of premium by successive insurers: See sec. 2622, ante.

Insurers in separate policies may be joined: See Code Civ. Proc., sec. 383.

ARTICLE XII.

REINSURANCE.

§ 2646. Reinsurance, what.
§ 2647. Disclosures required.
§ 2648. Reinsurance presumed to be against liability.
§ 2649. Original insured has no interest.

§ 2646. Reinsurance, what. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance. En. March 21, 1872.

Cal. Rep. Cit. 68, 432; 107, 330; 127, 470.

§ 2647. Disclosures required. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk. En. March 21, 1872.

§ 2648. Reinsurance presumed to be against liability. A reinsurance is presumed to be a contract of indemnity

against liability, and not merely against damage. En. March 21, 1872.

Cal. Rep. Cit. 107, 330.

§ 2649. Original insured has no interest. The original insured has no interest in a contract of reinsurance. En. March 21, 1872.

Cal. Rep. Cit. 68, 433.

CHAPTER II.

MARINE INSURANCE.

Article I. Definition of Marine Insurance, § 2655.
II. Insurable Interest, §§ 2659-2665.
III. Concealment, §§ 2669-2672.
IV. Representations, §§ 2676-2677.
V. Implied Warranties, §§ 2681-2688.
VI. The Voyage, and Deviation, §§ 2692-2697.
VII. Loss, §§ 2701-2712.
VIII. Abandonment, §§ 2716-2732.
IX. Measure of Indemnity, §§ 2736-2746.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

§ 2655. Marine insurance, what.

§ 2655. Marine insurance, what. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time. En. March 21, 1872.

Insurable interest: See ante, secs. 2546-2557.

ARTICLE II.

INSURABLE INTEREST.

§ 2659. Insurable interest in a ship.
§ 2660. Interest reduced by bottomry.
§ 2661. Freightage, what.
§ 2662. Expected freightage.
§ 2663. Interest in expected freightage, what.
§ 2664. Insurable interest in profits.
§ 2665. Insurable interest of charterer.

§ 2659. Insurable interest in a ship. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. En. March 21, 1872.

§ 2660. Interest reduced by bottomry. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. En. March 21, 1872.

Insurable interest generally: See secs. 2546 et seq.

Bottomry defined: Post, sec. 3017.

§ 2661. Freightage, what. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner either from the chartering of the ship or its employment for the carriage of his own goods or those of others. En. March 21, 1872.

Marine insurance, what: See sec. 2655, ante.

§ 2662. Expected freightage. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. En. March 21, 1872.

§ 2663. Interest in expected freightage, what. The interest mentioned in the last section exists, in the case of a charter-party, when the ship has broken ground on the chartered voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage. En. March 21, 1872.

§ 2664. Insurable interest in profits. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits. En. March 21, 1872.

§ 2665. Insurable interest of charterer. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss. En. March 21, 1872.

ARTICLE III.

CONCEALMENT.

§ 2669. Information must be communicated.
§ 2670. Material information.
§ 2671. Presumption of knowledge of loss.
§ 2672. Concealments which only affect the risk in question.

§ 2669. Information must be communicated. In marine insurance each party is bound to communicate, in addition to what is required by section 2563, all the information which he possesses, material to the risk, except such as is mentioned in section 2564, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose. En. March 21, 1872.

Concealment in insurance generally: See secs. 2561 et seq.; in marine insurance, sec. 2672.

§ 2670. Material information. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material. En. March 21, 1872.

Representation of expectation avoids contract, when: Post, sec. 2677.

§ 2671. Presumption of knowledge of loss. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication. En. March 21, 1872.

§ 2672. Concealments which only affect the risk in question. A concealment in a marine insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured:
2. The liability of the thing insured to capture and detention;
3. The liability to seizure from breach of foreign laws of trade;
4. The want of necessary documents; and,
5. The use of false and simulated papers. En. March 21, 1872.

ARTICLE IV.

REPRESENTATIONS.

§ 2676. Effect of intentional falsity.
§ 2677. Representation of expectation.

§ 2676. Effect of intentional falsity. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. En. March 21, 1872.

Representations generally: See ante, secs. 2571 et seq.

§ 2677. Representation of expectation. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance. En. March 21, 1872.

Expectation of a third person, material: Sec. 2670.

ARTICLE V.

IMPLIED WARRANTIES.

§ 2681. Warranty of seaworthiness.
§ 2682. Seaworthiness, what.
§ 2683. At what time seaworthiness must exist.
§ 2684. What things are required to constitute seaworthiness.
§ 2685. Different degrees of seaworthiness at different stages of the voyage.
§ 2686. Unseaworthiness during the voyage.
§ 2687. Seaworthiness for purposes of insurance on cargo.
§ 2688. Neutral papers.

§ 2681. Warranty of seaworthiness. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy. En. March 21, 1872. Am'd. 1873-4, 257.

Seaworthiness defined: See next section.

§ 2682. Seaworthiness, what. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy. En. March 21, 1872.

Seaworthiness, warranty of: Secs. 2683-2685, post.

§ 2683. At what time seaworthiness must exist. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

2. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transshipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped be seaworthy at the commencement of its particular voyage. En. March 21, 1872. Am'd. 1873-4, 257.

§ 2684. What things are required to constitute seaworthiness. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables, and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage. En. March 21, 1872.

§ 2685. Different degrees of seaworthiness at different stages of the voyage. Where different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion. En. March 21, 1872.

§ 2686. Unseaworthiness during the voyage. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom. En. March 21, 1872.

§ 2687. Seaworthiness for purposes of insurance on cargo. A ship which is seaworthy for the purpose of an insurance upon the ship may nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo. En. March 21, 1872.

§ 2688. Neutral papers. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon. En. March 21, 1872.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

§ 2692. Voyage insured, how determined.
§ 2693. Course of sailing, how determined.
§ 2694. Deviation, what.
§ 2695. When proper.
§ 2696. When improper.
§ 2697. Deviation exonerates the insurer.

§ 2692. Voyage insured, how determined. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places. En. March 21, 1872.

§ 2693. Course of sailing, how determined. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous. En. March 21, 1872.

§ 2694. Deviation, what. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. En. March 21, 1872.

§ 2695. When proper. A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control;

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not;

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith for the purpose of saving human life, or relieving another vessel in distress. En. March 21, 1872.

§ 2696. When improper. Every deviation not specified in the last section is improper. En. March 21, 1872.

§ 2697. Deviation exonerates the insurer. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. En. March 21, 1872.

Cal. Rep. Cit. 66, 297.

ARTICLE VII.

LOSS.

§ 2701. Total and partial loss.
§ 2702. Partial loss.
§ 2703. Actual and constructive total loss.
§ 2704. Actual total loss, what.
§ 2705. Constructive total loss.
§ 2706. Presumed actual loss.
§ 2707. Insurance on cargo, etc., when voyage is broken up.
§ 2708. Cost of reshipment, etc.
§ 2709. When insured is entitled to payment.
§ 2710. Abandonment of goods on insurance of profits. (Repealed.)
§ 2711. Average loss.
§ 2712. Insurance against total loss.

§ 2701. Total and partial loss. A loss may be either total or partial. En. March 21, 1872.

Total loss either actual or constructive: See post, sec. 2703.

Actual total loss defined: See post, sec. 2704.

Constructive total loss defined: See post, sec. 2705.

§ 2702. Partial loss. Every loss which is not total is partial. En. March 21, 1872.

Liability on partial loss: Sec. 2737.

One-third new for old: Sec. 2746.

§ 2703. Actual and constructive total loss. A total loss may be either actual or constructive. En. March 21, 1872.

Actual total loss defined: Sec. 2704.

Actual loss, when presumed: Sec. 2706.

Constructive loss defined: Sec. 2705.

§ 2704. Actual total loss, what. An actual total loss is caused by:

1. A total destruction of the thing insured;

2. The loss of the thing by sinking, or by being broken up;

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured. En. March 21, 1872.

Cal. Rep. Cit. 146, 280.

§ 2705. Constructive total loss. A constructive total loss is one which gives to a person insured a right to abandon, under section 2717. En. March 21, 1872.

Abandonment for constructive total loss: Secs. 2716 et seq.

§ 2706. Presumed actual loss. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case. En. March 21, 1872.

§ 2707. Insurance on cargo, etc., when voyage is broken up. When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped. En. March 21, 1872. Am'd. 1873-4, 258.

Constructive total loss of cargo: See secs. 2716 et seq.

§ 2708. Cost of reshipment, etc. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured. En. March 21, 1872.

§ 2709. When insured is entitled to payment. Upon an actual total loss, a person insured is entitled to payment without notice of abandonment. En March 21, 1872.

§ 2710. Abandonment of goods on insurance of profits. (Repealed.) En. March 21, 1872. Rep. 1873-4, 258.

§ 2711. Average loss. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured. En. March 21, 1872. Am'd. 1873-4, 258.

Cal. Rep. Cit. 92, 387.

§ 2712. Insurance against total loss. An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured. En. March 21, 1872. Am'd. 1873-4, 259.

ARTICLE VIII.

ABANDONMENT.

§ 2716. Abandonment, what.
§ 2717. When insured may abandon.
§ 2718. Must be unqualified.
§ 2719. When may be made.
§ 2720. Abandonment may be defeated.
§ 2721. How made.
§ 2722. Requisites of notice.
§ 2723. No other cause can be relied on.
§ 2724. Effect.
§ 2725. Waiver of formal abandonment.
§ 2726. Agents of the insured become agents of the insurer.
§ 2727. Acceptance not necessary.
§ 2728. Acceptance conclusive.
§ 2729. Accepted abandonment, irrevocable.
§ 2730. Freightage, how affected by abandonment of ship.
§ 2731. Refusal to accept.
§ 2732. Omission to abandon.

§ 2716. Abandonment, what. Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. En. March 21, 1872.

Abandonment, requisites of: Post, secs. 2718-2723.
Constructive total loss defined: Ante, sec. 2705.

§ 2717. When insured may abandon. A person insured by a contract of marine insurance may abandon the thing

insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost, or would have to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one-half;

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned. En. March 21, 1872.

Cal. Rep. Cit. 146, 280.

Freightage, how affected by abandonment: Post, sec. 2730.

§ 2718. Must be unqualified. An abandonment must be neither partial nor conditional. En. March 21, 1872.

§ 2719. When may be made. An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion. En. March 21, 1872.

Omitting to abandon, insured may still recover for his actual loss: Post, sec. 2732.

§ 2720. Abandonment may be defeated. Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual. En. March 21, 1872.

§ 2721. How made. Abandonment is made by giving notice thereof to the insurer, which may be done orally, or in writing. En. March 21, 1872.

§ 2722. Requisites of notice. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss. En. March 21, 1872.

See post, sec. 2723.

§ 2723. No other cause can be relied on. An abandonment can be sustained only upon the cause specified in the notice thereof. En. March 21, 1872.

§ 2724. Effect. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity. En. March 21, 1872.

Subrogation of insurer: See sec. 2745.

§ 2725. Waiver of formal abandonment. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment. En. March 21, 1872.

§ 2726. Agents of the insured become agents of the insurer. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit. En. March 21, 1872.

§ 2727. Acceptance not necessary. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer upon his receiving notice of abandonment. En. March 21, 1872.

Compare with sec. 2731, infra.

§ 2728. Acceptance conclusive. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment. En. March 21, 1872.

§ 2729. Accepted abandonment, irrevocable. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. En. March 21, 1872.

§ 2730. **Freightage, how affected by abandonment of ship.** On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship. En. March 21, 1872.

Abandonment of freightage: Ante, sec. 2717, subd. 4.

§ 2731. **Refusal to accept.** If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which my have come to the hands of the insured. En. March 21, 1872.

Acceptance not presumed from silence: Ante, sec. 2727.

§ 2732. **Omission to abandon.** If a person insured omits to abandon, he may nevertheless recover his actual loss. En. March 21, 1872.

ARTICLE IX.

MEASURE OF INDEMNITY.

§ 2736. Valuation, when conclusive.
§ 2737. Partial loss.
§ 2738. Profits.
§ 2739. Valuation apportioned.
§ 2740. Valuation applied to profits.
§ 2741. Estimating loss under an open policy.
§ 2742. Arrival of thing damaged
§ 2743. Labor and expenses.
§ 2744. General average.
§ 2745. Contribution.
§ 2746. One third new for old.

§ 2736. **Valuation, when conclusive.** A valuation in a policy of the marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. En. March 21, 1872.

Valued policies: See ante, sec. 2596.

Valued policy on freightage or cargo: See sec. 2739, infra.

Valuation of profits: See sec. 2740.

Valued policy of fire insurance: See post, sec. 2756.

§ 2737. Partial loss. A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. En. March 21, 1872.

Compare with section 2756, stating the measure of indemnity in case of fire insurance.

§ 2738. Profits. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole. En. March 21, 1872.

See infra, sec. 2740.

§ 2739. Valuation apportioned. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part. En. March 21, 1872.

§ 2740. Valuation applied to profits. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount. En. March 21, 1872.

Harmonizes with sec. 2738, ante.

§ 2741. Estimating loss under an open policy. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated: En. March 21, 1872.

Partial loss of ship: Post, sec. 2746.

§ 2742. Arrival of thing damaged. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound. En. March 21, 1872.

§ 2743. Labor and expenses. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss, if that afterwards occurs. En. March 21, 1872.

§ 2744. General average. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against. En. March 21, 1872.

General average generally: Ante, secs. 2152 et seq.

§ 2745. Contribution. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. En. March 21, 1872. Am'd. 1873-4, 259.

Subrogation of insurer: Ante, sec. 2724.

§ 2746. One-third new for old. In the case of a partial loss of a ship or its equipments, the old materials are to

be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one half per cent for each month that it has been fastened to the ship. En. March 21, 1872.

Sale of wrecked or damaged vessels: See Pol. Code, sec. 2507.

CHAPTER III.

FIRE INSURANCE.

§ 2752. False representations. (Repealed.)
§ 2753. Alteration increasing risk.
§ 2754. Alteration not increasing risk.
§ 2755. Acts of the insured.
§ 2756. Measure of indemnity.
§ 2757. Value of interest, how may be fixed. Total or partial loss.

§ 2752. False representations. (Repealed.) En. March 21, 1872. Rep. 1873-4, 259.

§ 2753. Alteration increasing risk. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance. En. March 21, 1872.

Cal. Rep. Cit. 122, 599.

§ 2754. Alteration not increasing risk. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance. En. March 21, 1872.

Cal. Rep. Cit. 122, 597; 122, 599; 122, 600.

§ 2755. Acts of the insured. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss. En. March 21, 1872.

§ 2756. Measure of indemnity. If there is no valuation in the policy, the measure of indemnity in an insurance

against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance. En. March 21, 1872.

Valued policy in marine insurance: See ante, sec. 2736.

§ 2757. Value of interest, how may be fixed. Total or partial loss. Whenever the insured desires to have a valuation named in his policy, insuring any building or structure against fire, he may require such building or structure to be examined by the insurer and the value of the insured's interest therein shall be thereupon fixed by the parties. The cost of such examination shall be paid for by the insured. A clause shall be inserted in such policy stating substantially that the value of the insured's interest in such building or structure has been thus fixed. In the absence of any change increasing the risk without the consent of the insurer or of fraud on the part of the insured, then in case of a total loss under such policy, the whole amount so insured upon the insured's interest in such building or structure, as stated in the policy upon which the insurers have received a premium. shall be paid, and in case of a partial loss the full amount of the partial loss shall be so paid, and in case there are two or more policies covering the insured's interest therein, each policy shall contribute pro rata to the payment of such whole or partial loss. But in no case shall the insurer be required to pay more than the amount thus stated in such policy. This section shall not prevent the parties from stipulating in such policies concerning the repairing, rebuilding or replacing buildings or structures wholly or partially damaged or destroyed. En. Stats. 1900-01, 572.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

§ 2762. Insurance upon life, when payable.
§ 2763. Insurable interest.
§ 2764. Assignee, etc., of life policy need have no interest.
§ 2765. Notice of transfer.
§ 2766. Measure of indemnity.

§ 2762. Insurance upon life, when payable. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life. En. March 21, 1872.

Mutual life, health, and accident insurance corporations: See ante, secs. 437 et seq.; post, Appendix, title Insurance.

Fraternal societies not insurance companies: See ante, sec. 451.

§ 2763. Insurable interest. Every person has an insurable interest in the life and health:

1. Of himself;

2. Of any person on whom he depends wholly or in part for education or support;

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends. En. March 21, 1872.

Cal. Rep. Cit. 90, 248.

Insurable interest generally: Ante, secs. 2546 et seq.

§ 2764. Assignee, etc., of life policy need have no interest. A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered En. March 21, 1872.

Cal. Rep. Cit. 90, 251.

Compare with section 2553, ante.

§ 2765. Notice of transfer. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve

the validity of a policy of insurance upon life or health, unless thereby expressly required. En. March 21, 1872.

§ 2766. **Measure of indemnity.** Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. En. March 21, 1872.

Act relating to life, health, accident and annuity or endowment insurance: See post, Appendix, title Insurance

TITLE XII.

INDEMNITY.

§ 2772. Indemnity, what.
§ 2773. Indemnity for a future wrongful act void.
§ 2774. Indemnity for a past wrongful act valid.
§ 2775. Indemnity extends to acts of agents.
§ 2776. Indemnity to several.
§ 2777. Person indemnifying liable jointly or severally with person indemnified.
§ 2778. Rules for interpreting agreement of indemnity.
§ 2779. When person indemnifying is a surety.
§ 2780. Bail, what.
§ 2781. How regulated.

§ 2772. **Indemnity, what.** Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person. En. March 21, 1872.

Cal. Rep. Cit. 58, 439; 70, 557.

§ 2773. **Indemnity for a future wrongful act void.** An agreement to indemnify a person against an act thereafter to be done is void, if the act be known by such person, at the time of doing it, to be unlawful. En. March 21, 1872. Am'd. 1873-4, 259.

§ 2774. **Indemnity for a past wrongful act valid.** An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony. En. March 21, 1872.

§ 2775. **Indemnity extends to acts of agents.** An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences, but also to those of his agents. En. March 21, 1872.

Cal. Rep. Cit. 58, 439.

§ 2776. Indemnity to several. An agreement to indemnify several persons applies to each, unless a contrary intention appears. En. March 21, 1872.

§ 2777. Person indemnifying liable jointly or severally with person indemnified. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act. En. March 21, 1872.

§ 2778. Rules for interpreting agreement of indemnity. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits,

which by want of ordinary care he failed to establish in the action. En. March 21, 1872.

Cal. Rep. Cit. 57, 50; 121, 519. Subd. 1—81, 273. Subd. 3—81, 274. Subd. 4—68, 432. Subd. 5—81, 273.

§ 2779. When person indemnifying is a surety. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay. En. March 21, 1872.

§ 2780. Bail, what. Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail. En. March 21, 1872.

§ 2781. How regulated. The obligations of bail are governed by the statutes specially applicable thereto. En. March 21, 1872.

TITLE XIII.

GUARANTY.

Chapter I. Guaranty in General, §§ 2787-2825.
II. Suretyship, §§ 2831-2866.

CHAPTER I.

GUARANTY IN GENERAL.

Article I. Definition of Guaranty, §§ 2787-2788.
II. Creation of Guaranty, §§ 2792-2795.
III. Interpretation of Guaranty, §§ 2799-2802.
IV. Liability of Guarantors, §§ 2806-2810.
V. Continuing Guaranty, §§ 2814-2815.
VI. Exoneration of Guarantors, §§ 2819-2825.

ARTICLE I.

DEFINITION OF GUARANTY.

§ 2787. Guaranty, what.
§ 2788. Knowledge of principal not necessary to creation of guaranty.

§ 2787. Guaranty, what. A guaranty is a promise to answer for the debt, default, or miscarriage of another person. En. March 21, 1872.

Cal. Rep. Cit. 62, 487; 77, 477; 94, 103; 113, 434; 119, 70.

§ 2788. Knowledge of principal not necessary to creation of guaranty. A person may become guarantor even without the knowledge or consent of the principal. En. March 21, 1872.

ARTICLE II.

CREATION OF GUARANTY.

§ 2792. Necessity of a consideration.
§ 2793. Guaranty to be in writing, etc.
§ 2794. Engagement to answer for obligation of another, when deemed original.
§ 2795. Acceptance of guaranty.

§ 2792. Necessity of a consideration. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation. En. March 21, 1872.

Cal. Rep. Cit. 109, 221; 146, 547.

§ 2793. Guaranty to be in writing, etc. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration. En. March 21, 1872.

Cal. Rep. Cit. 111, 284; 113, 434.

§ 2794. Engagement to answer for obligation of another, when deemed original. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation, in respect

to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Whether a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument. En. March 21, 1872.

Cal. Rep. Cit. 59, 444; 67, 294; 67, 598; 77, 8; 77, 81; 81, 288; 113, 434; 117, 591. Subd. 1—130, 415. Subd. 2—128, 253; 70, 557. Subd. 3—117, 593; 123, 383.

§ 2795. Acceptance of guaranty. A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance. En. March 21, 1872.

Cal. Rep. Cit. 125, 481; 128, 253.

Absolute guaranty: See post, sec. 2806.

ARTICLE III.

INTERPRETATION OF GUARANTY.

§ 2799. Guaranty of incomplete contract.
§ 2800. Guaranty that an obligation is good or collectible.
§ 2801. Recovery upon such guaranty.
§ 2802. Guarantor's liability upon such guaranty.

§ 2799. Guaranty of incomplete contract. In a guaranty of a contract, the terms of which are not then settled, it

is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed. En. March 21, 1872.

Cal. Rep. Cit. 80, 341.

§ 2800. Guaranty that an obligation is good or collectible. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence. En. March 21, 1872.

§ 2801. Recovery upon such guaranty. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby. En. March 21, 1872.

§ 2802. Guarantor's liability upon such guaranty. In the cases mentioned in section 2800, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor. En. March 21, 1872.

ARTICLE IV.

LIABILITY OF GUARANTORS.

§ 2806. Guaranty, how construed.
§ 2807. Liability upon guaranty of payment or performance.
§ 2808. Liability upon guaranty of a conditional obligation.
§ 2809. Obligation of guarantor cannot exceed that of the principal.
§ 2810. Guarantor not liable on an illegal contract.

§ 2806. Guaranty, how construed. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor. En. March 21, 1872.

Cal. Rep. Cit. 78, 448; 128, 470.

§ 2807. Liability upon guaranty of payment or performance. A guarantor of payment or performance is liable

to the guarantee immediately upon the default of the principal, and without demand or notice. En. March 21, 1872.

Cal. Rep. Cit. 62, 487; 77, 477; 77, 478; 78, 448; 86, 373; 94, 103; 105, 441; 128, 470; 128, 668.

§ 2808. Liability upon guaranty of a conditional obligation. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof. En. March 21, 1872.

Cal. Rep. Cit. 121, 606.

§ 2809. Obligation of guarantor cannot exceed that of the principal. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation. En. March 21, 1872.

Cal. Rep. Cit. 61, 399.

§ 2810. Guarantor not liable on an illegal contract. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal. En. March 21, 1872.

ARTICLE V.

CONTINUING GUARANTY.

§ 2814. Continuing guaranty, what.
§ 2815. Revocation.

§ 2814. Continuing guaranty, what. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty. En. March 21, 1872.

Cal. Rep. Cit. 138, 729; 141, 677.

§ 2815. Revocation. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce. En. March 21, 1872.

Cal. Rep. Cit. 141, 676.

ARTICLE VI.

EXONERATION OF GUARANTORS.

§ 2819. What dealings with debtor exonerate guarantor.
§ 2820. Void promises.
§ 2821. Rescission of alteration.
§ 2822. Part performance.
§ 2823. Delay of creditor does not discharge guarantor.
§ 2824. Guarantor indemnified by the debtor, not exonerated.
§ 2825. Discharge of principal by act of law does not discharge guarantor.

§ 2819. What dealings with debtor exonerate guarantor. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended. En. March 21, 1872.

Cal. Rep. Cit. 70, 84; 77, 477; 91, 210; 110, 665; 117, 497; 120, 501; 122, 66; 122, 67; 122, 668; 130, 254; 139, 418; 145, 244; 146, 521.

Liability of guarantor: See ante, secs. 2806 et seq.

Rights of creditor where security given: See post, sec. 2854.

Forbearance will not discharge: Post, sec. 2823.

Neglect or refusal to sue after request will discharge: Post, sec. 2845.

Discharge of surety by alteration of principal's contract: Post, sec. 2821.

§ 2820. Void promises. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section. En. March 21, 1872.

§ 2821. Rescission of alteration. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement. En. March 21, 1872.

§ 2822. Part performance. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same

measure as that of the principal, but does not otherwise affect it. En. March 21, 1872.

Cal. Rep. Cit. 145, 199.

Part performance of the obligation, expressly accepted by the creditor in writing, would extinguish the obligation of the debtor, and therefore that of the surety: Ante, secs. 1523, 1524.

§ 2823. **Delay of creditor does not discharge guarantor.** Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor. En. March 21, 1872.

Cal. Rep. Cit. 77, 60; 77, 478; 94, 103; 130, 254.

Notice to creditor to sue: See post, sec. 2845.

§ 2824. **Guarantor indemnified by the debtor, not exonerated.** A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal. En. March 21, 1872.

Cal. Rep. Cit. 117, 297; 117, 497.

See ante, sec. 2819, and sec. 2794, subd. 1.

§ 2825. **Discharge of principal by act of law does not discharge guarantor.** A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor. En. March 21, 1872.

CHAPTER II.

SURETYSHIP.

Article I. Who are Sureties, §§ 2831-2832.
II. Liability of Sureties, §§ 2836-2840.
III. Rights of Sureties, §§ 2844-2850.
IV. Rights of Creditors, § 2854.
V. Letter of Credit, §§ 2858-2866.

ARTICLE I.

WHO ARE SURETIES.

§ 2831. Surety, what.
§ 2832. Apparent principal may show that he is surety.

§ 2831. **Surety, what.** A surety is one who at the request of another and for the purpose of securing to him

a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor. En. March 21, 1872.

Cal. Rep. Cit. 78, 448; 101, 420; 105, 441; 109, 221; 112, 34; 119, 70; 120, 501; 127, 526; 139, 253; 139, 254; 139, 255; 145, 499.

Distinction between sureties and guarantors: Ante, secs. 2807, 2808.

§ 2832. Apparent principal may show that he is surety. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal. En. March 21, 1872.

Cal. Rep. Cit. 55, 342; 60, 392; 62, 503; 76, 130; 77, 477; 109, 409; 114, 625; 114, 626; 114, 627; 136, 371; 137, 692; 139, 418; 145, 498.

ARTICLE II.

LIABILITY OF SURETIES.

§ 2836. Limit of surety's obligation.
§ 2837. Rules of interpretation.
§ 2838. Judgment against surety does not alter the relation.
§ 2839. Surety exonerated by performance or offer of performance.
§ 2840. Surety discharged by certain acts of the creditor.

§ 2836. Limit of surety's obligation. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty. En. March 21, 1872.

Cal. Rep. Cit. 71, 300; 81, 532; 81, 537; 108, 565; 116, 36; 119, 257.

§ 2837. Rules of interpretation. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts. En. March 21, 1872.

Cal. Rep. Cit. 77, 448; 78, 448; 80, 618; 81, 532; 100, 104; 119, 257; 138, 730.

§ 2838. Judgment against surety does not alter the relation. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety. En. March 21, 1872.

§ 2839. Surety exonerated by performance or offer of performance. Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety. En. March 21, 1872. Am'd. 1873-4, 260.

Cal. Rep. Cit. 98, 399; 139, 418.
Offer of performance: Ante, secs. 1485-1505.

§ 2840. Surety discharged by certain acts of the creditor. A surety is exonerated—

1. In like manner with a guarantor;

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety which it is his duty to do. En. March 21, 1872.

Cal. Rep. Cit. 77, 448; 77, 477; 78, 448; 96, 641; 112, 35; 114, 627; 120, 501; 130, 254; 139, 418; 145, 244; 146, 520. Subd. 1—91, 210. Subd. 2—144, 96.
Subd. 1: Ante, sec. 2819.
Subd. 3: Ante, sec. 2845.

ARTICLE III.

RIGHTS OF SURETIES.

§ 2844. Surety has rights of guarantor.
§ 2845. Surety may require the creditor to proceed against the principal.
§ 2846. Surety may compel principal to perform obligations, when due.
§ 2847. A principal bound to reimburse his surety.
§ 2848. The surety acquires the right of the creditor.
§ 2849. Surety entitled to benefit of securities held by creditor.
§ 2850. The property of principal to be taken first.

§ 2844. Surety has rights of guarantor. A surety has all the rights of a guarantor, whether he become personally responsible or not. En. March 21, 1872.

Cal. Rep. Cit. 77, 477; 78, 448; 105, 441; 109, 221; 110, 665; 120, 501; 141, 677; 145, 244.
See ante, secs. 2808-2810.

§ 2845. Surety may require the creditor to proceed against the principal. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself

pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced. En. March 21, 1872.

Cal. Rep. Cit. 53, 689.

Mere delay by the creditor to pursue the principal does not discharge the surety: Ante, sec. 2828; see, also, ante, sec. 2840, subd. 1.

§ 2846. Surety may compel principal to perform obligations, when due. A surety may compel his principal to perform the obligation when due. En. March 21, 1872.

Cal. Rep. Cit. 53, 689.

The action under this section is provided for in sec. 1050, Code Civ. Proc.

Section 2845, ante, may be considered as containing another substitute for the equitable action.

§ 2847. A principal bound to reimburse his surety. If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section. En. March 21, 1872.

Cal. Rep. Cit. 53, 689; 67, 243; 117, 202; 121, 423; 122, 673; 127, 527; 133, 578.

§ 2848. The surety acquires the right of the creditor. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such. En. March 21, 1872.

Cal. Rep. Cit. 53, 689; 67, 243; 122, 673; 130, 254; 133, 578; 139, 49; 139, 50; 139, 52.

§ 2849. Surety entitled to benefit of securities held by creditor. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a cosurety at the time of entering into the contract of suretyship, or acquired by him

afterwards, whether the surety was aware of the security or not. En. March 21, 1872.

Cal. Rep. Cit. 96, 641; 114, 626; 114, 627; 119, 70; 127, 371; 133, 578.

§ 2850. The property of principal to be taken first. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation. En. March 21, 1872.

Cal. Rep. Cit. 119, 70; 120, 501.

ARTICLE IV.

RIGHTS OF CREDITORS.

§ 2854. Creditor entitled to benefit of securities held by surety.

§ 2854. Creditor entitled to benefit of securities held by surety. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction. En. March 21, 1872.

Cal. Rep. Cit. 109, 136.

ARTICLE V.

LETTER OF CREDIT.

§ 2858. Letter of credit, what.
§ 2859. How addressed.
§ 2860. Liability of the writer.
§ 2861. Letters of credit, either general or special.
§ 2862. Nature of general letter of credit.
§ 2863. Extent of general letter of credit.
§ 2864. A letter of credit may be a continuing guaranty.
§ 2865. When notice to the writer necessary.
§ 2866. The credit given must agree with the terms of the letter.

§ 2858. Letter of credit, what. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. En. March 21, 1872.

Cal. Rep. Cit. 125, 481.

§ 2859. How addressed. A letter of credit may be addressed to several persons in succession. En. March 21, 1872.

§ 2860. Liability of the writer. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms. En. March 21, 1872.

Cal. Rep. Cit. 70, 384.

§ 2861. Letters of credit, either general or special. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general. En. March 21, 1872.

Credit to correspond with terms of the letter: See post, sec. 2866.

§ 2862. Nature of general letter of credit. A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name. En. March 21, 1872.

§ 2863. Extent of general letter of credit. Several persons may successively give credit upon a general letter. En. March 21, 1872.

§ 2864. A letter of credit may be a continuing guaranty. If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty. En. March 21, 1872.

§ 2865. When notice to the writer necessary. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice. En. March 21, 1872.

Cal. Rep. Cit. 125, 481.

§ 2866. The credit given must agree with the terms of the letter. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter. En. March 21, 1872.

Cal. Rep. Cit. 61, 430.

TITLE XIV.

LIEN.

Chapter I. Liens in General, §§ 2872-2913.
II. Mortgage, §§ 2920-2972.
III. Pledge, § 2986-3011.
IV. Bottomry, §§ 3017-3029.
V. Respondentia, §§ 3036-3040.
VI. Other Liens, §§ 3046-3065.
VII. Stoppage in Transit, §§ 3076-3080

CHAPTER I.

LIENS IN GENERAL.

Article I. Definition of Liens, §§ 2872-2877.
II. Creation of Liens, §§ 2881-2884.
III. Effect of Liens, §§ 2888-2892.
IV. Priority of Liens, §§ 2897-2899.
V. Redemption from Liens, §§ 2903-2905.
VI. Extinction of Liens, §§ 2909-2913.

ARTICLE I.

DEFINITION OF LIENS.

§ 2872. Lien, what.
§ 2873. Liens, general or special.
§ 2874. General lien, what.
§ 2875. Special lien, what.
§ 2876. Prior liens.
§ 2877. Contracts subject to provisions of this chapter.

§ 2872. Lien, what. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property, by which it is made security for the performance of an act. En. March 21, 1872. Am'd. 1877-8, 88.

Cal. Rep. Cit. 118, 419; 121, 384; 126, 469.

Compare Code Civ. Proc., sec. 1180.

Unclaimed property, rights in relation to: See Pol. Code, secs. 3152 et seq.

§ 2873. Liens, general or special. Liens are either general or special. En. March 21, 1872.

§ 2874. General lien, what. A general lien in one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a partic-

ular class of obligations, which exist in his favor against the owner of the property. En. March 21, 1872.

Factors.—Usage of trade usually gives factors a general lien, which is established in this state by section 3053, post.

Banker: Post, sec. 3054.
Master of ship: Post, sec. 3055.
Mate and seamen: Post, sec. 3056.
Lien for services: See post, sec. 3051.

§ 2875. Special lien, what. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto. En. March 21, 1872.

Cal. Rep. Cit. 146, 560.
Incidental thereto: See next section.

§ 2876. Prior liens. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists. En. March 21, 1872.

Cal. Rep. Cit. 121, 656.

§ 2877. Contracts subject to provisions of this chapter. Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter. En. March 21, 1872.

ARTICLE II.

CREATION OF LIENS.

§ 2881. Lien, how created.
§ 2882. No lien for claim not due.
§ 2883. Lien on future interest.
§ 2884. Lien may be created by contract.

§ 2881. Lien, how created. A lien is created

1. By contract of the parties; or,
2. By operation of law. En. March 21, 1872.

Cal. Rep. Cit. 80, 116; 92, 79; 118, 419; 126, 469; 146, 560.

§ 2882. No lien for claim not due. No lien arises by mere operation of law until at the time at which the act to

be secured thereby ought to be performed. En. March 21, 1872.

Cal. Rep. Cit. 73, 20.

§ 2883. Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. En. March 21, 1872.

Cal. Rep. Cit. 118, 419.

§ 2884. Lien may be created by contract. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence. En. March 21, 1872.

Cal. Rep. Cit. 77, 386; 80, 116; 121, 274.

ARTICLE III.

EFFECT OF LIENS.

§ 2888. Lien, or contract for lien, transfers no title.
§ 2889. Certain contracts void.
§ 2890. Creation of lien does not imply personal obligation.
§ 2891. Extent of lien.
§ 2892. Holder of lien not entitled to compensation.

§ 2888. Lien, or contract for lien, transfers no title. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien. En. March 21, 1872.

Cal. Rep. Cit. 73, 306; 99, 518; 101, 452; 105, 297; 105, 468; 112, 12; 112, 219; 112, 601; 115, 593; 121, 519; 126, 207; 128, 406; 128, 407; 138, 336.

Post, secs. 2927 et seq.

§ 2889. Certain contracts void. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. En. March 21, 1872.

Cal. Rep. Cit. 85, 368; 105, 76; 114, 599; 120, 153; 120, 154; 128, 406; 128, 407.

§ 2890. Creation of lien does not imply personal obligation. The creation of a lien does not of itself imply that

any person is bound to perform the act for which the lien is a security. En. March 21, 1872.

Cal. Rep. Cit. 114, 139.

See post, secs. 2909, 2928, 3000.

§ 2891. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured. En. March 21, 1872.

Cal. Rep. Cit. 146, 560.

§ 2892. Holder of lien not entitled to compensation. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1892 and 1893. En. March 21, 1872.

ARTICLE IV.

PRIORITY OF LIENS.

§ 2897. Priority of liens.
§ 2898. Priority of mortgage for price.
§ 2899. Order of resort to different funds.

§ 2897. Priority of liens. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia. En. March 21, 1872.

§ 2898. Priority of mortgage for price. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws. En. March 21, 1872.

Cal. Rep. Cit. 87, 627; 120, 683.

§ 2899. Order of resort to different funds. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order on the demand of any party interested:

1. To the things upon which he has an exclusive lien;
2. To the things which are subject to the fewest subordinate liens;
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had—
(1) To the things which have not been transferred since the prior lien was created;
(2) To the things which have been so transferred without a valuable consideration; and,
(3) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer. En. March 21, 1872.

Cal. Rep. Cit. 114, 541; 119, 296; 119, 354; 119, 355; 135, 117; 139, 352; 139, 361; 141, 12; 142, 557.

Marshaling of assets: See post, sec. 3433.

ARTICLE V.

REDEMPTION FROM LIENS.

§ 2903. Right to redeem.
§ 2904. Rights of inferior lienor.
§ 2905. Redemption from lien, how made.

§ 2903. Right to redeem. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed, and, by such redemption, becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except in so far as he was bound to make such redemption for their benefit. En. March 21, 1872. Am'd. 1905, 617.

The change consists in the addition of the clause after the word "foreclosed." The design of the amendment is to state and apply the rule of equity in such cases, it being feared that the declaration of a similar rule in section 2904, and its omission in this section might lead to doubt.—Code Commissioner's Note.

Cal. Rep. Cit. 61, 429; 79, 120; 80, 355; 95, 195; 95, 196; 95, 201; 95, 203.

Redemption from execution sale: See Code Civ. Proc., secs. 346, 347, 701 et seq.

Pledgor's right of redemption may be foreclosed: Sec. 3011, post.

§ 2904. Rights of inferior lienor. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby. En. March 21, 1872.

Cal. Rep. Cit. 78, 603; 78, 604.

§ 2905. Redemption from lien, how made. Redemption from a lien is made by performing or offering to perform, the act for the performance of which it is a security, and paying or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay. En. March 21, 1872.

Cal. Rep. Cit. 101, 548.

ARTICLE VI.

EXTINCTION OF LIENS.

§ 2909. Lien deemed accessory to the act whose performance it secures.
§ 2910. Extinction by sale or conversion.
§ 2911. Lien extinguished by lapse of time under statute of limitations.
§ 2912. Apportionment of lien.
§ 2913. When restoration extinguishes lien.

§ 2909. Lien deemed accessory to the act whose performance it secures. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation. En. March 21, 1872.

Cal. Rep. Cit. 104, 12; 122, 416.

Assignment of debt: See sec. 2936, post.

§ 2910. Extinction by sale or conversion. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon. En. March 21, 1872.

Cal. Rep. Cit. 74, 255; 100, 37; 111, 185; 117, 368; 122, 283; 122, 416; 124, 288; 142, 542; 142, 543.

§ 2911. Lien extinguished by lapse of time under statute of limitation. A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation. En. March 21, 1872.

Cal. Rep. Cit. 56, 343; 58, 151; 58, 152; 66, 336; 72, 311; 115, 176; 116, 259; 120, 222; 120, 223; 122, 416; 122,

418; 124, 512; 131, 439; 132, 423; 132, 48; 137, 385; 137, 386; 140, 20; 140, 21; 142, 475; 142, 480; 144, 361; 144, 577; 144, 578.

See Code Civ. Proc., secs. 335-347.

§ 2912. Apportionment of lien. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible. En. March 21, 1872.

Cal. Rep. Cit. 122, 416.

§ 2913. When restoration extinguishes lien. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons, subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value. En. March 21, 1872. Am'd. 1873-4, 260; 1905, 617.

Cal. Rep. Cit. 59, 159; 59, 168; 99, 518; 122, 416.

CHAPTER II.

MORTGAGE.

Article I. Mortgages in General, §§ 2920-2942.
II. Mortgages of Real Property, §§ 2947-2952.
III. Mortgages of Personal Property, §§ 2955-2971.

ARTICLE I.

MORTGAGES IN GENERAL.

§ 2920. Mortgage, what.
§ 2921. Property adversely held may be mortgaged.
§ 2922. To be in writing.
§ 2923. Lien of a mortgage, when special.
§ 2924. Transfer of interest, when a mortgage and when a pledge.
§ 2925. Transfer made subject to defeasance may be proved.
§ 2926. Mortgage on what a lien.
§ 2927. Mortgage does not entitle mortgagee to possession.
§ 2928. Mortgage not a personal obligation.
§ 2929. Waste.
§ 2930. Subsequently acquired title inures to mortgagee.
§ 2931. Foreclosure.
§ 2932. Power of sale.
§ 2933. Power of attorney to execute.
§ 2934. Recording assignment of mortgage.
§ 2935. Recording assignment of mortgage not notice to mortgagor.
§ 2936. Mortgage passes by assignment of debt.
§ 2937. Time allowed for filing mortgage for record. (Repealed.)
§ 2938. Mortgage, how discharged.
§ 2939. Same.
§ 2939½. Discharge by foreign executors.
§ 2940. Certificate and record of discharge.
§ 2941. Duty of mortgagee on satisfaction of mortgage.
§ 2942. Provisions of this chapter do not affect bottomry or respondentia.

§ 2920. Mortgage, what. Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession. En. March 21, 1872.

Cal. Rep. Cit. 58, 15; 66, 98; 88, 441; 98, 518; 107, 148; 109, 365; 112, 187; 121, 489; 122, 479; 125, 461; 128, 300; 128, 491; 135, 279; 147, 389.

The code substitutes, instead of the actual possession previously requisite, the recording provisions of secs. 2957, 2959, 2962, 2963, 2965, and 2966.

Actual transfer of possession of personalty would change it into a pledge: See sec. 2924, post.

§ 2921. Property adversely held may be mortgaged. A mortgage may be created upon property held adversely to the mortgagor. En. March 21, 1872.

This provision is a logical sequence of section 2947, post, and section 1047, ante.

§ 2922. To be in writing. A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property. En. March 21, 1872.

Cal. Rep. Cit. 53, 680; 56, 344; 57, 471; 58, 152; 65, 516; 68, 53; 74, 350; 84, 205; 85, 288; 112, 366; 117, 415; 120, 223; 120, 224; 122, 418; 122, 419; 122, 420; 126, 469; 128, 551; 129, 417; 134, 600; 137, 389; 140, 689; 144, 783; 147, 388.

Mortgage, form of: Sec. 2948, post.

§ 2923. Lien of a mortgage, when special. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession. En. March 21, 1872.

Special lien, definition: See ante, sec. 2875.

§ 2924. Transfer of interest, when a mortgage and when a pledge. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. En. March 21, 1872. Am'd. 1873-4, 260.

Cal. Rep. Cit. 58, 15; 59, 112; 64, 514; 71, 411; 74, 254; 80, 352; 91, 461; 100, 254; 105, 469; 105, 470; 106, 680; 107, 148; 121, 384; 121, 542; 123, 694; 126, 604; 127, 256; 128, 300; 129, 163; 135, 279; 144, 783; 147, 389.

Deed absolute on its face, when a mortgage: See post, secs. 2925, 2950.

§ 2925. **Transfer made subject to defeasance may be proved.** The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument. En. March 21, 1872.

Cal. Rep. Cit. 58, 15; 64, 514; 71, 411; 88, 325; 91, 461; 119, 21; 123, 694; 127, 256; 144, 132.

Deed absolute on its face a mortgage: See secs. 2924, ante; 2950, post.

Recording defeasance: See sec. 2950, post.

§ 2926. **Mortgage on what a lien.** A mortgage is a lien upon everything that would pass by a grant of the property. En. March 21, 1872.

Cal. Rep. Cit. 80, 252; 80, 352; 126, 605.

Fixtures generally: See ante, sec. 660.

Growing crops: Post, sec. 2972.

§ 2927. **Mortgage does not entitle mortgagee to possession.** A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration. En. March 21, 1872.

Cal. Rep. Cit. 72, 309; 80, 326; 88, 440; 96, 32; 106, 680; 169, 362; 109, 365; 112, 187; 117, 416; 121, 544; 127, 652; 128, 491.

Mortgagee's possession: Ante, secs. 2920, 2923.

§ 2928. **Mortgage not a personal obligation.** A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect. En. March 21, 1872.

Cal. Rep. Cit. 57, 642; 66, 98; 101, 419; 127, 204; 137, 255.

§ 2929. **Waste.** No person whose interest is subject to the lien of a mortgage may do any act which will sub-

stantially impair the mortgagee's security. En. March 21, 1872.

Cal. Rep. Cit. 80, 246.

Damages are recoverable by the purchaser at the sale, for injuries by tenant: See sec. 746, Code Civ. Proc.

§ 2930. **Subsequently acquired title inures to mortgagee.** Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt, in like manner as if acquired before the execution. En. March 21, 1872. Am'd. 1873-4, 260.

Cal. Rep. Cit. 52, 335; 52, 336; 67, 279; 98, 518; 138, 683; 144, 146.

Sec. 1106, ante.

§ 2931. **Foreclosure.** A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 144, 333.

Foreclosure of mortgage.—Place of trial: Code Civ. Proc., sec. 392. Receiver may be appointed: Id., sec. 564. Proceedings in actions for foreclosure: Id., sec. 726. Remedy exclusive: Id., sec. 744. Surplus, how disposed of: Id., sec. 727. Installment loans: Id., sec. 728. Actions against estates: Id., sec. 1500.

§ 2932. **Power of sale.** A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security. En. March 21, 1872.

Cal. Rep. Cit. 57, 482; 101, 227.

Power of sale is a part of the security and passes by assignment of the debt: Sec. 858, ante.

§ 2933. **Power of attorney to execute.** A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property. En. March 21, 1872.

Cal. Rep. Cit. 144, 35.

Authorization generally: See sec. 2309, ante.

§ 2934. **Recording assignment of mortgage.** An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operate as notice to all per-

sons subsequently deriving title to the mortgage from the assignor. En. March 21, 1872. Am'd. 1873-4, 261.

Cal. Rep. Cit. 109, 49; 120, 241; 120, 242.

§ 2935. **Recording assignment of mortgage not notice to mortgagor.** When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument. En. March 21, 1872. Am'd. 1873-4, 261.

Cal. Rep. Cit. 120, 242; 136, 316.

§ 2936. **Mortgage passes by assignment of debt.** The assignment of a debt secured by mortgage carries with it the security. En. March 21, 1872.

Cal. Rep. Cit. 88, 327; 93, 117; 109, 48.

§ 2937. **Time allowed for filing mortgage for record.** (Repealed.) En. March 21, 1872. Rep. 1873-4, 261.

Cal. Rep. Cit. 46, 607; 46, 608; 46, 609; 127, 309.

§ 2938. **Mortgage, how discharged.** A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this —— day of ——, in the year ——. A B, Recorder." En. March 21, 1872.

Cal. Rep. Cit. 72, 457; 119, 297.

§ 2939. **Same.** A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives, or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, satisfied, or discharged. En. March 21, 1872.

§ 2939½. Discharge by foreign executors. Foreign executors and administrators may satisfy mortgages upon the records of any county in this state, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary or of administration, and which certificate shall also recite that said letters have not been revoked. En. Stats. 1895, 29.

§ 2940. Certificate and record of discharge. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded. En. March 21, 1872.

§ 2941. Duty of mortgagee on satisfaction of mortgage. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars. En. March 21, 1872. Am'd. 1873-4, 261; 1880, 11.

Cal. Rep. Cit. 106, 200; 106, 201.

§ 2942. Provisions of this chapter do not affect bottomry or respondentia. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter. En. March 21, 1872.

Bottomry: See secs. 3017 et seq., post.

Respondentia: See secs. 3036 et seq., post.

ARTICLE II.

MORTGAGES OF REAL PROPERTY.

§ 2947. What real property may be mortgaged.
§ 2948. Form of mortgage.
§ 2949. What must be recorded as a mortgage. (Repealed.)
§ 2950. Defeasance, to affect grant absolute on its face, must be recorded.
§ 2951. By whom paid after property passes by succession or will. (Repealed.)
§ 2952. May be recorded.

§ 2947. What real property may be mortgaged. Any interest in real property which is capable of being transferred may be mortgaged. En. March 21, 1872.

Cal. Rep. Cit. 75, 106; 99, 548; 122, 627; 124, 329; 131, 606.

See sec. 1045, ante.

Property held adversely may be mortgaged: Ante, sec. 2921.

§ 2948. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the —— day of ——, in the year ——, by A B, of ——, mortgagor, to C D, of ——, mortgagee, witnesseth:

"That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of —— dollars, on [or before] the —— day of ——, in the year ——, with interest thereon [or as security for the payment of an obligation, describing it, etc.]. A B." En. March 21, 1872.

Cal. Rep. Cit. 67, 275; 124, 329.

Deed absolute in form construed as a mortgage: See secs. 2924, 2925, ante, and see sec. 2950, post.

§ 2949. What must be recorded as a mortgage. (Repealed.) En. March 21, 1872. Rep. 1873-4, 262.

Cal. Rep. Cit. 124, 329.

§ 2950. Defeasance, to affect grant absolute on its face, must be recorded. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devises, or persons having actual notice, unless an instrument of defeasance,

duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated. En. March 21, 1872.

Cal. Rep. Cit. 119, 21; 124, 327; 144, 132.

See sec. 1217, ante.

Deed absolute on its face, when a mortgage: See secs. 2924, 2925.

§ 2951. By whom paid after property passes by succession or will. (Repealed.) En. March 21, 1872. Rep. 1873-4, 262.

Cal. Rep. Cit. 64, 274; 124, 327.

§ 2952. May be recorded. Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants thereof. En. March 21, 1872. Am'd. 1873-4, 262.

Cal. Rep. Cit. 46, 607; 46, 608; 109, 49; 124, 327; 124, 329.

See secs. 1169-1172 and 1213-1217, ante.

Fees for acknowledgment and recording: Pol. Code, secs. 798, 4235, 4245.

Mortgages recorded in separate set of books: Sec. 1171, ante.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

§ 2955. What personal property may be mortgaged.
§ 2956. Form of personal mortgage.
§ 2957. When void as to third persons.
§ 2958. Mortgage of ships, when void as to third persons.
§ 2959. Where recorded.
§ 2960. Property in transit, where to be recorded.
§ 2961. Property of a common carrier, where to be recorded.
§ 2962. Recorded in different places.
§ 2963. Personal mortgage may be recorded.
§ 2964. Certified copies may be recorded, when.
§ 2965. Property exempt from effect of mortgage, when.
§ 2966. May be taken by mortgagee as a pledge, when.
§ 2967. How foreclosed.
§ 2968. Mortgage property may be levied upon.
§ 2969. Limitations on right of levy.
§ 2970. Distribution of proceeds of sale under process.
§ 2971. Sections not applicable to mortgage of certain ships.
§ 2972. Lien of a mortgage on growing crop.
§ 2973. Validity of certain mortgages.

§ 2955. What personal property may be mortgaged. Mortgages may be made upon the following personal property, and none other:

1. Locomotives, engines and other rolling stock of a railroad.

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Am'd.

2. Steamboat machinery, the machinery used by machinists, foundrymen, and mechanics.
3. Steam engines and boilers.
4. Mining machinery.
5. Printing presses and material.
6. Professional libraries.
7. Instruments of surveyors, physicians and dentists.
8. Upholstery, furniture and household goods.
9. Oil paintings, pictures and works of art.
10. All growing crops, including grapes and fruit.
11. Vessels of more than five tons burden.
12. Instruments, negatives, furniture and fixtures of a photograph gallery.
13. The machinery, casks, pipes, tubes and utensils used in the manufacture or storage of wine, fruit brandy, fruit syrup or sugar; also wines, fruit brandy, fruit syrup, or sugar, with the cooperage in which the same are contained.
14. Pianos and organs.
15. Iron and steel safes.
16. Cattle, horses, mules, swine, sheep, goats and turkeys and the increase thereof.
17. Harvesters, threshing outfits, hay presses, wagons, farming implements, and the equipments of a livery stable, including buggies, carriages, harness, robes.
18. Abstract systems, books, maps, papers, and slips of searchers of records.
19. Raisins and dried fruits, cured or in process of being cured. Also all boxes, fruit graders, drying trays and fruit ladders.
20. Bees and bee-hives, apiaries and apiary stock, including frames, combs and extractors, also honey at apiaries.
21. Machinery, tanks, stills, agitators, leachers, and apparatus used in producing and refining petroleum, asphaltum, fuel oils, lubricating oils and greases.
22. The bedroom furniture, carpets, tables, stoves, ranges, cooking utensils and all furniture and equipments usually found in a hotel. En. March 21, 1872. Am'd. 1875-6, 79; 1877-8, 88; 1887, 5; 1893, 84; 1895, 57; 1897, 95; 1903, 78; 1905, 36.

Cal. Rep. Cit. 56, 631; 57, 255; 63, 4; 71, 334; 84, 206; 104, 26; 105, 469; 105, 470; 106, 679; 107, 147; 109, 199; 109, 201; 112, 184; 124, 330; 127, 297; 131, 606; 13, 607; Subd. 5—94, 525. Subd. 8—63, 333; 91, 286; 101, 10. Subd. 9—91, 639. Subd. 10—115, 93; 123, 236; 124, 327. Subd. 16—116, 83; 126, 204; 133, 498.

Removal of property from mortgaged premises, when larceny: See Pen Code, sec. 502½.

Further chattel mortgage is larceny: See Pen. Code, sec. 538.

§ 2956. **Form of personal mortgage.** A mortgage of personal property may be made in substantially the following form:

"This mortgage, made the —— day of ——, in the year ——, by A B, of ——, by occupation a ——, mortgagor, to C D, of ——, by occupation a ——, mortgagee witnesseth:

"That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of —— dollars, on [or before] the —— day of ——, in the year ——, with interest thereon [or, as security for the payment of a note or obligation, describing it, etc.]. A B." En. March 21, 1872.

Cal. Rep. Cit. 63, 551; 91, 639; 106, 678; 124, 327.

§ 2957. **When void as to third persons.** A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved, certified and recorded, in like manner as grants of real property. En. March 21, 1872.

Cal. Rep. Cit. 63, 551; 63, 552; 67, 34; 67, 57; 67, 58; 84, 556; 84, 557; 91, 638; 94, 496; 104, 427; 105, 330; 105, 332; 105, 470; 106, 679; 108, 253; 108, 257; 115, 319; 115, 325; 121, 274; 124, 327; 127, 296; 127, 304; 127, 306; 127, 308; 127, 309; 128, 105. Subd. 1—130, 477; 131, 607. Subd. 2—143, 6.

Recording: See secs. 2959, 2961-2965, post.

§ 2958. **Mortgage of ships, when void as to third persons.** A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs, and devisee, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

§ 2959. **Where recorded.** A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, and also of the county in which the property mortgaged is situated, or to which it may be removed. En. March 21, 1872.

Cal. Rep. Cit. 63, 551; 115, 319; 115, 321; 115, 322; 115, 323; 124, 327; 127, 298.

Duty of recorder: See Pol. Code, sec. 4234 et seq.

Record in different places: See sec. 2962.

§ 2960. **Property in transit, where to be recorded.** For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

See sec. 2965, subd. 1.

§ 2961. **Property of a common carrier, where to be recorded.** For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

§ 2962. **Recorded in different places.** A single mortgage of personal property, embracing several things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded. En. March 21, 1872.

Cal. Rep. Cit. 124, 327; 127, 310.

County where property is situated: See 2959.

§ 2963. **Personal mortgage may be recorded.** Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged, or proved and certified, recorded in like manner and with like effect as grants or real property; but they must be recorded in books kept for personal mortgages exclusively. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

See secs. 1169-1171 and 1213-1217, ante.

§ 2964. Certified copies may be recorded, when. A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded the record thereof has the same force and effect as though it was of the original mortgage. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

§ 2965. Property exempt from effect of mortgage, when. When personal property mortgaged is thereafter by the mortgagor removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation thereof, unless either:

1. The mortgagee, within thirty days after such removal, causes the mortgage to be recorded in the county to which the property has been removed; or,

2. The mortgagee, within thirty days after such removal, takes possession of the property, as prescribed in the next section. En. March 21, 1872.

Cal. Rep. Cit. 115, 319; 115, 320; 115, 323; 124, 327; 127, 298.

§ 2966. May be taken by mortgagee as a pledge, when. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

§ 2967. How foreclosed. A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on Pledge, or by proceedings under the Code of Civil Procedure. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.
Sale of pledge: See secs. 3000 et seq., post.
Actual notice required: See 3002, post.
Foreclosure: Code Civ. Proc., secs. 726-729.

§ 2968. Mortgage property may be levied upon. Personal property mortgaged may be taken under attachment

or execution issued at the suit of a creditor of the mortgagor. En. March 21, 1872.

Cal. Rep. Cit. 56, 218; 67, 59; 71, 70; 91, 121; 111, 234; 124, 327.

§ 2969. Limitations on right of levy. Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee. En. March 21, 1872.

Cal. Rep. Cit. 56, 218; 63, 551; 63, 552; 67, 59; 71, 70; 91, 121; 91, 122; 111, 234; 124, 327; 126, 289; 126, 290; 131, 556.

Measure of special owner's damage for conversion: See post, sec. 3338.

§ 2970. Distribution of proceeds of sale under process. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases. En. March 21, 1872.

Cal. Rep. Cit. 63, 552; 124, 327.

§ 2971. Sections not applicable to mortgage of certain ships. Sections 2957, 2959, 2960, 2961, 2962, 2963, 2964, 2965, and 2966 do not apply to any mortgage of a ship or part of a ship under the flag of the United States. En. March 21, 1872.

Cal. Rep. Cit. 124, 327.

§ 2972. Lien of a mortgage on growing crop. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor. En. Stats. 1877-8, 89.

Cal. Rep. Cit. 59, 142; 63, 4; 70, 197; 77, 244; 107, 29; 109, 201; 117, 416; 124, 327; 142, 544.

§ 2973. Validity of certain mortgages. Mortgages of personal property, other than that mentioned in section twenty-nine hundred and fifty-five, and mortgages not made in conformity with the provisions of this article,

are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof. En. Stats. 1905, 617.

This section merely declares the law already existing upon the subject. It is deemed proper to have the same expressed in the Code.—Code Commissioner's Note.

CHAPTER III.

PLEDGE.

§ 2986. Pledge, what.
§ 2987. When contract is to be deemed a pledge.
§ 2988. Delivery essential to validity of pledge.
§ 2989. Increase of thing
§ 2990. Lienor may pledge property to extent of his lien.
§ 2991. Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.
§ 2992. Pledge lender, what.
§ 2993. Pledge holder, what.
§ 2994. When pledge lender may withdraw property pledged.
§ 2995. Obligations of pledge holder
§ 2996. Pledge holder must enforce rights of pledgee.
§ 2997. Obligation of pledgee and pledge holder, for reward.
§ 2998. Gratuitous pledge holder.
§ 2999. Debtor's misrepresentation of value of pledge.
§ 3000. When pledgee may sell.
§ 3001. Sale of pledged property.
§ 3002. Notice of sale to pledgor.
§ 3003. Waiver of notice of sale.
§ 3004. Waiver of demand.
§ 3005. Sale must be by auction.
§ 3006. Pledgee's sale of securities.
§ 3007. Sale on the demand of the pledgor.
§ 3008. Surplus to be paid to pledgor.
§ 3009. Pledgee may retain all that can become due.
§ 3010. Pledgee or pledge holder may purchase.
§ 3011. Pledgee may foreclose right of redemption.

§ 2986. Pledge, what. Pledge is a deposit of personal property by way of security for the performance of another act. En. March 21, 1872.

Cal. Rep. Cit. 76, 172; 113, 466; 121, 519; 123, 648; 125, 187; 133, 195; 144, 633.

Increase of property pledged: Sec. 2989, infra.

Note.—Much difficulty has arisen in determining whether a certain transaction is a pledge or a chattel mortgage, the question generally being whether the title has passed or not. In this state, it has been seen, title never passes in case of property conveyed or deposited as security: Sec. 2888, ante. And, also, whenever the possession of personal property is transferred as security only, it is to be treated as a pledge: Sec. 2987, post. And even

a chattel mortgage, when the possession of the property mortgaged is transferred, becomes a pledge: Sec. 2924, and sec. 2987. The question is, therefore, much simplified, possession being the criterion.

§ 2987. When contract is to be deemed a pledge. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge. En. March 21, 1872.

Cal. Rep. Cit. 99, 518; 112, 602; 113, 467; 123, 648; 133, 195; 144, 633.

§ 2988. Delivery essential to validity of pledge. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed. En. March 21, 1872.

Cal. Rep. Cit. 59, 159; 59, 168; 61, 429; 71, 334; 112, 13; 122, 283; 122, 470; 125, 187.

§ 2989. Increase of thing. The increase of property pledged is pledged with the property. En. March 21, 1872.

§ 2990. Lienor may pledge property to extent of his lien. One who has a lien upon property may pledge it to the extent of his lien. En. March 21, 1872.

Compare next section.

Lienor's action for damages: See sec. 3338, post.

§ 2991. Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property, made by the other to a pledgee who received the property in good faith, in the ordinary course of business, and for value. En. March 21, 1872.

Cal. Rep. Cit. 52, 616; 59, 168; 90, 13; 121, 576; 124, 289.

§ 2992. Pledge lender, what. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated. En. March 21, 1872.

Cal. Rep. Cit. 133, 195.

§ 2993. Pledge holder, what. A pledgor and pledgee may agree upon a third person with whom to deposit the

property pledged, who, if he accepts the deposit, is called a pledge holder. En. March 21, 1872.

Cal. Rep. Cit. 130, 262.

§ 2994. When pledge lender may withdraw property pledged. One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent. En. March 21, 1872.

§ 2995. Obligations of pledge holder. A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same. En. March 21, 1872.

§ 2996. Pledge holder must enforce rights of pledgee. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them. En. March 21, 1872.

Cal. Rep. Cit. 121, 520; 130, 262.

§ 2997. Obligation of pledgee and pledge holder, for reward. A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward. En. March 21, 1872.

Depositary for reward: See sec. 1852, ante. See sec. 3007, post.

§ 2998. Gratuitous pledge holder. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary. En. March 21, 1872.

Cal. Rep. Cit. 125, 599.

See ante, secs. 1845 and 2995.

§ 2999. Debtor's misrepresentation of value of pledge. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented;

and in default thereof may recover his debt immediately, though it be not actually due. En. March 21, 1872.

§ 3000. When pledgee may sell. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed. En. March 21, 1872.

Cal. Rep. Cit. 66, 98; 125, 600; 128, 208; 144, 333.

Another remedy is provided by sec. 3011, post. And sale is restricted in case of most choses in action by sec. 3006, post. See also sec. 2890, ante.

Foreclosure of right of redemption: Sec. 3011.

§ 3001. Sale of pledged property. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found. En. March 21, 1872. Am'd. 1873-4, 262.

Cal. Rep. Cit. 62, 439; 82, 200; 125, 600; 128, 208.

§ 3002. Notice of sale to pledgor. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend. En. March 21, 1872.

Cal. Rep. Cit. 68, 526; 82, 200; 125, 600; 128, 208.

§ 3003. Waiver of notice of sale. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance. En. March 21, 1872.

Cal. Rep. Cit. 68, 526; 82, 201; 125, 600.

§ 3004. Waiver of demand. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract. En. March 21, 1872.

Cal. Rep. Cit. 82, 201; 125, 600.

§ 3005. Sale must be by auction. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar prop-

erty; and must be for the highest obtainable price. En. March 21, 1872.

Cal. Rep. Cit. 66, 98; 68, 526; 82, 200; 113, 478; 125, 600.

§ 3006. Pledgee's sale of securities. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due. En. March 21, 1872.

Cal. Rep. Cit. 85, 129; 114, 129; 121, 520; 125, 600; 127, 175; 134, 289.

§ 3007. Sale on the demand of the pledgor. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due. En. March 21, 1872.

Cal. Rep. Cit. 125, 600.

See sec. 3009, infra.

§ 3008. Surplus to be paid to pledgor. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand. En. March 21, 1872.

Cal. Rep. Cit. 101, 453; 125, 600.

§ 3009. Pledgee may retain all that can become due. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due. En. March 21, 1872. Am'd. 1873-4, 262.

Cal. Rep. Cit. 125, 600.

§ 3010. Pledgee or pledge holder may purchase. Whenever property pledged is sold at public auction, in the manner provided by section three thousand and five of this code, the pledgee or pledge holder may purchase said property at such sale. En. March 21, 1872. Am'd. 1895, 27.

Cal. Rep. Cit. 62, 439; 125, 600.

§ 3011. Pledgee may foreclose right of redemption. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale. En. March 21, 1872.

Cal. Rep. Cit. 66, 98; 85, 129; 125, 600; 127, 175; 134, 289.

Pawnbrokers: Pen. Code, secs. 338-343.

CHAPTER IV.

BOTTOMRY.

§ 3017. Bottomry, what.
§ 3018. Owner of ship may hypothecate.
§ 3019. When master may hypothecate ship.
§ 3020. Same.
§ 3021. When master may hypothecate freight money.
§ 3022. Rate of interest.
§ 3023. Rights of lender, when no necessity for bottomry existed.
§ 3024. Stipulation for personal liability void.
§ 3025. When money loaned is to be repaid.
§ 3026. When bottomry loan becomes due.
§ 3027. Bottomry lien, how lost.
§ 3028. Preference of bottomry lien over other liens.
§ 3029. Priority of bottomry liens.

§ 3017. Bottomry, what. Bottomry is a contract by which a ship or it freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. En. March 21, 1872.

It is independent of possession: Sec. 3027, post, and cases cited.

Insurance by owner: See sec. 2660, ante.

§ 3018. Owner of ship may hypothecate. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place. En. March 21, 1872.

§ 3019. When master may hypothecate ship. The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship. En. March 21, 1872.

Freightage, the authority of the master extends to: Sec. 3021.

§ 3020. Same. The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case. En. March 21, 1872.

May sell ship and cargo: See secs. 2377-2379, ante.

§ 3021. When master may hypothecate freight money. The master of a ship may hypothecate freightage upon

bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him. En. March 21, 1872.

§ 3022. **Rate of interest.** Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant. En. March 21, 1872.

§ 3023. **Rights of lender, when no necessity for bottomry existed.** A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances. En. March 21, 1872.

§ 3024. **Stipulation for personal liability void.** A stipulation in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void. En. March 21, 1872.

§ 3025. **When money loaned is to be repaid.** In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved. En. March 21, 1872.

§ 3026. **When bottomry loan becomes due.** Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract. En. March 21, 1872.

§ 3027. **Bottomry lien, how lost.** A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time. En. March 21, 1872.

§ 3028. **Preference of bottomry lien over other liens.** A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for sup-

plies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage. En. March 21, 1872.

Seamen's wages: Ante, secs. 2048-2066.

§ 3029. Priority of bottomry liens. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity. En. March 21, 1872.

CHAPTER V.

RESPONDENTIA.

§ 3036. Respondentia, what.
§ 3037. Respondentia by owner.
§ 3038. Respondentia by master.
§ 3039. Rate of interest.
§ 3040. Obligations of shipowner.

§ 3036. Respondentia, what. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks. En. March 21, 1872.

§ 3037. Respondentia by owner. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose. En. March 21, 1872.

§ 3038. Respondentia by master. The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby. En. March 21, 1872.

Master may sell cargo: Sec. 2379, ante.

§ 3039. Rate of interest. The provisions of sections 3022 to 3029 apply equally to loans on respondentia. En. March 21, 1872.

§ 3040. Obligations of shipowner. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay under a contract of respondentia made by the master, in order to discharge its lien. En. March 21, 1872.

See sec. 2385, ante.

Master personally responsible: Sec. 2383, ante.

CHAPTER VI.

OTHER LIENS.

§ 3046. Lien of seller of real property.
§ 3047. When transfer of contract waives lien.
§ 3048. Extent of seller's lien.
§ 3049. Lien of seller of personal property.
§ 3050. Purchaser's lien on real property.
§ 3051. Lien on personal property for service performed.
§ 3052. Liens on personal property.
§ 3053. Lien of factor.
§ 3054. Banker's lien.
§ 3055. Shipmaster's lien.
§ 3056. Seamen's lien.
§ 3057. Officers' lien.
§ 3058. Judgment lien.
§ 3059. Mechanic's lien.
§ 3060. Lien on ships.
§ 3061. Lien of workingmen on threshing machines, etc.
§ 3062. Lien of person in charge of stallion, etc.
§ 3063. Filing of claim. Notice to purchasers.
§ 3064. Action to enforce lien.
§ 3065. Lien of person who cuts, etc., logs, lumber, etc.

§ 3046. Lien of seller of real property. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer. En. March 21, 1872.

Cal. Rep. Cit. 57, 471; 87, 625; 89, 93; 98, 33; 116, 259; 119, 372; 119, 373; 123, 212; 125, 360.

A transfer of personal security waives the lien: Sec. 3047, infra.

Transfer by vendee to bona fide purchaser or incumbrancer discharges lien: Sec. 3048, infra.

§ 3047. When transfer of contract waives lien. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien. En. March 21, 1872.

Cal. Rep. Cit. 74, 585; 87, 625; 89, 93; 123, 212; 125, 360.

§ 3048. **Extent of seller's lien.** The liens defined in sections 3046 and 3050 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value. En. March 21, 1872.

Cal. Rep. Cit. 125, 360.

See sec. 19, ante.

§ 3049. Lien of seller of personal property. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price. En. March 21, 1872.

Cal. Rep. Cit. 77, 144; 94, 17; 106, 445; 121, 246; 143, 438.
See sec. 3002, ante.

§ 3050. Purchaser's lien on real property. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration. En. March 21, 1872.

Cal. Rep. Cit. 87, 55; 103, 289; 103, 293; 113, 664; 125, 360.

§ 3051. Lien on personal property for service performed. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; and livery or boarding or feed stable proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business have a general lien, dependent on possession; upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work. En. March 21, 1872. Am'd. 1877-8, 89; 1900-01, 270.

Cal. Rep. Cit. 53, 353; 100, 410; 121, 9.
Carriers' lien: Secs. 2144, 2191.

§ 3052. Liens on personal property. A person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by

giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof. En. March 21, 1872.

Cal. Rep. Cit. 92, 658; 121, 9.

Lien in favor of owner of propagating animal: See post, Appendix, title Liens.

§ 3053. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal. En. March 21, 1872.

Power of pledging: See sec. 2991, ante.

Factors' enforcement of lien: Ante, sec. 2027.

Commission merchant making advances may sell property, when: See Pol. Code, sec. 3156.

§ 3054. Banker's lien. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business. En. March 21, 1872.

Cal. Rep. Cit. 63, 364.

§ 3055. Shipmaster's lien. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages. En. March 21, 1872.

§ 3056. Seamen's lien. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien. En. March 21, 1872.

§ 3057. Officers' lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had. En. March 21, 1872.

Attachment and execution: See Code Civ. Proc., secs. 542, 682, 688, and 690.

§ 3058. Judgment lien. The lien of a judgment is regulated by the Code of Civil Procedure. En. March 21, 1872.

Judgment lien: See Code Civ. Proc., secs. 671, 674.

§ 3059. Mechanic's lien. The liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure. En. March 21, 1872.

Mechanics' liens: See Code Civ. Proc., secs. 1183-1203.

See also, ante, sec. 3052; post, Appendix, title Liens.

§ 3060. Lien on ships. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the Code of Civil Procedure. En. March 21, 1872.

Lien of innkeepers and boarding-house keepers: See secs. 1861-1863 of this code. Liens for wages, etc.: Code Civ. Proc., secs. 1204-1207.

Liens for services performed for ships: See Code Civ. Proc., sec. 813.

§ 3061. Lien of workmen on threshing machines, etc. Every person performing work or labor in, with, about, or upon any barley crusher, threshing machine or engine, horsepower, wagon, or other appliance thereof, while engaged in crushing or threshing, has a lien thereon to the extent of the value of his services. Such lien extends for ten days after any such person ceases work or labor; provided, within that time, an action is brought to recover the amount of the claim. If judgment is given in favor of the plaintiff in any such action, and it is further found that he is entitled to a lien under the provisions of this section, property subject thereto, or so much thereof as may be necessary, may be sold to satisfy such judgment; but if several judgments have been recovered against the same property for the enforcement of such liens, the proceeds of the sale must be divided pro rata among the judgment creditors. En. Stats. 1905, 618.

The statute of 1885, page 109, concerning liens in favor of persons working on threshing machines, is codified in this section.—Code Commissioner's Note.

§ 3062. Lien of person in charge of stallion, etc. Every owner or person having in charge any stallion, jack, or bull, used for propagating purposes, has a lien for the agreed price of its service upon any mare or cow and upon

the offspring of such service, unless some willfully false representation concerning the breeding or pedigree of such stallion, jack, or bull has been made or published by the owner or person in charge thereof, or by some other person, at the request or instigation of such owner or person in charge. En. Stats. 1905, 618.

3062, 3063, 3064. The statute of 1891, page 90, is codified in the above sections.—Code Commissioner's Note.

§ 3063. Filing of verified claim; notice to subsequent purchasers. Every claimant of a lien provided for in the preceding section must, within ninety days after the service on account of which the lien is claimed, file in the office of the county recorder of the county where the mare or cow subject thereto is kept, a verified claim containing a particular description of the mare or cow, the date and place of service, the name of the owner or reputed owner of such mare or cow, a description by name, or otherwise, of the stallion, jack, or bull performing the service, the name of the owner or person in charge thereof, and the amount of the lien claimed. Such claim, so filed, is notice to subsequent purchasers and incumbrancers of such mare or cow and of the offspring of such service for one year after such filing. En. Stats. 1905, 618.

See note to § 3062, ante.

§ 3064. Action to enforce lien. An action to enforce any lien created under section thirty hundred and sixty-two may be brought in any county wherein any of the property subject thereto may be found, and the plaintiff is entitled to the remedies provided in sections thirty hundred and forty-four and thirty hundred and sixty-five upon complying with such sections, both of which are hereby made applicable to the proceedings in such action. En. Stats. 1905, 619.

See note to § 3062, ante.

§ 3065. Lien of person who cuts, etc., logs, lumber, etc. A person who labors at cutting, hauling, rafting or drawing logs, bolts, or other timber, has a lien thereon for the amount due for his personal services, which takes precedence of all other claims, to continue for thirty days after the logs, bolts, or other timber arrive at the place of destination for sale or manufacture, while such logs, bolts, or other timber are in the county in which such labor was performed. The lien hereby created ceases and determines unless the claimant thereof, within twenty days from the

time such labor is completed, brings suit to foreclose the same. The plaintiff in any such suit, at the time of issuing the summons or at any time afterwards, may have the logs, bolts, or other timber upon which such lien subsists attached, as provided in this code, upon delivering to the clerk an affidavit by or on behalf of the plaintiff, showing that defendant is indebted to the plaintiff upon a demand for labor performed, either in the cutting, hauling, rafting, or drawing such logs, bolts, or other timber, and that the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not brought, to hinder, delay, or defraud any creditor or creditors of the defendant. En. Stats. 1905, 619.

So much of the statute of 1877-8, page 747, as amended in 1880, page 38, and 1887, page 53, relating to loggers' liens, as is deemed necessary to be preserved, is codified in the above section.—Code Commissioner's Note.

CHAPTER VII.

STOPPAGE IN TRANSIT.

§ 3076. When consignor may stop goods.
§ 3077. What is insolvency of consignee.
§ 3078. Transit, when ended.
§ 3079. Stoppage, how effected.
§ 3080. Effect of stoppage.

§ 3076. When consignor may stop goods. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof. En. March 21, 1872.

That bills of lading are negotiable: See ante, secs. 2127, 2128.

§ 3077. What is insolvency of consignee. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so. En. March 21, 1872.

§ 3078. Transit, when ended. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee. En. March 21, 1872.

§ 3079. Stoppage, how effected. Stoppage in transit can be effected only by notice to the carrier or depositary of the property or by taking actual possession thereof. En. March 21, 1872.

§ 3080. Effect of stoppage. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller. En. March 21, 1872.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

Chapter I. Negotiable instruments in General, §§ 3086-3165.
II, Bills of Exchange, §§ 3171-3238.
III. Promissory Notes, §§ 3244-3248.
IV. Checks, §§ 3254, 3255.
V. Bank Notes and Certificates of Deposit, §§ 3261, 3262.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

Article I. General Definitions, §§ 3086-3095.
II. Interpretation, §§ 3099-3104.
III. Indorsement, §§ 3108-3125.
IV. Presentment for Payment, §§ 3130-3137.
V. Dishonor, §§ 3141-3151.
VI. Excuse of Presentment and Notice, §§ 3155-3160.
VII. Extinction, §§ 3164-3165.

ARTICLE I.

GENERAL DEFINITIONS.

§ 3086. To what instruments this title is applicable.
§ 3087. Negotiable instrument, what.
§ 3088. Must be for unconditional payment of money.
§ 3089. Payee.
§ 3090. Instrument may be in alternative.
§ 3091. Date, etc.
§ 3092. May contain a pledge, etc.
§ 3093. What it must not contain.
§ 3094. Date.
§ 3095. Different classes of negotiable instruments.

§ 3086. To what instruments this title is applicable. The provisions of this title apply only to negotiable instruments, as defined in this article. En. March 21, 1872.

Cal. Rep. Cit. 94, 145.

§ 3087. Negotiable instrument, what. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 64, 391; 68, 548; 81, 327; 82, 639; 103, 324; 131, 386.

Fictitious payee: See secs. 3102, 3103.

§ 3088. Must be for unconditional payment of money. A negotiable instrument must be made payable in money only and without any condition not certain of fulfillment, except that it may provide for the payment of attorney's fees and costs of suit, in case suit be brought thereon to compel the payment thereof. En. March 21, 1872. Am'd. 1905, 96.

Cal. Rep. Cit. 74, 596; 82, 639; 133, 685.

Other contract in instrument: See infra, sec. 3093.

§ 3089. Payee. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made. En. March 21, 1872.

Fictitious payee: See secs. 3102, 3103.

Indorsement in blank: See sec. 3125.

§ 3090. Instrument may be in alternative. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this title. En. March 21, 1872.

§ 3091. Date, etc. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment. En. March 21, 1872.

Antedating: See post, sec. 3094.

Time of payment: See post, sec. 3248.

Place of payment: See secs. 3100, 3130, 3131, subd. 4.

§ 3092. May contain a pledge, etc. A negotiable instrument may contain a pledge of collateral security with authority to dispose thereof. En. March 21, 1872.

§ 3093. What it must not contain. A negotiable instrument must not contain any other contract than such as is specified in this article. En. March 21, 1872.

Cal. Rep. Cit. 64, 391; 68, 548; 82, 639; 131, 386; 133, 685.

§ 3094. Date. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death

or incapacity at the time of the nominal date. En. March 21, 1872.

Cal. Rep. Cit. 145, 841.

§ 3095. Different classes of negotiable instruments. There are six classes of negotiable instruments, namely:

1. Bills of exchange;
2. Promissory notes;
3. Bank notes;
4. Checks;
5. Bonds;
6. Certificate of deposit. En. March 21, 1872.

Cal. Rep. Cit. 64, 391; 77, 641; 130, 548.

Bills of lading: Ante, sec. 2127.

Certificates of stock are not negotiable instruments: See ante, sec. 324.

Bills of exchange: See post, secs. 3171 et seq.

Promissory notes: See post, secs. 3244 et seq.

Bank notes: See post, sec. 3261.

Checks: See post, secs. 3254 et seq.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

§ 3099. Time of payment.
§ 3100. Place of payment not specified.
§ 3101. Instruments payable to a person or his order, how construed.
§ 3102. Unindorsed note, when negotiable.
§ 3103. Fictitious payee.
§ 3104. Presumption of consideration.

§ 3099. Time of payment. A negotiable instrument which does not specify the time of payment is payable immediately. En. March 21, 1872.

Cal. Rep. Cit. 130, 548.

Time of payment: See ante, sec. 3091.

§ 3100. Place of payment not specified. A negotiable instrument which does not specify a place of payment is payable at the residence or place of business of the maker, or wherever he may be found. En. March 21, 1872. Am'd. 1873-4, 262.

Cal. Rep. Cit. 113, 24.

Place of payment.—Where no place of payment is expressed in a bill, the drawee's place of residence is understood: Post, sec. 3131, subd. 4.

§ 3101. Instrument payable to a person or his order, how construed. An instrument, otherwise negotiable in form, payable to a person named, but with the words

added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer. En. March 21, 1872.

Cal. Rep. Cit. 61, 347.

§ 3102. Unindorsed note, when negotiable. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all others persons having notice of the facts as if payable to the bearer. En. March 21, 1872.

Cal. Rep. Cit. 54, 110.
Fictitious payee: See next section.
Payee generally: See ante, sec. 3089.

§ 3103. Fictitious payee. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer. En. March 21, 1872.

§ 3104. Presumption of consideration. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business. En. March 21, 1872.

Cal. Rep. Cit. 64, 413; 64, 415; 106, 655; 139, 667.

ARTICLE III.

INDORSEMENT.

§ 3108. Indorsement, what.
§ 3109. Agreement to indorse.
§ 3110. When may be made on separate paper.
§ 3111. Kinds of indorsement.
§ 3112. General indorsement, what.
§ 3113. Special indorsement, what.
§ 3114. General indorsement, how made special.
§ 3115. Destruction of negotiability by indorser.
§ 3116. Implied warranty of indorser.
§ 3117. Indorser, when liable to payee.
§ 3118. Indorsement without recourse.
§ 3119. Same.
§ 3120. Indorsee privy to contract.
§ 3121. Rights of accommodation indorser. (Repealed.)
§ 3122. Effect of want of consideration.
§ 3123. Indorsee in due course, what.
§ 3124. Rights of indorsee in due course.
§ 3125. Instrument left blank.

§ 3108. Indorsement, what. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon, to

another person, is called an indorser, and his act is called indorsement. En. March 21, 1872.

Cal. Rep. Cit. 56, 445; 62, 487; 77, 478; 87, 617; 94, 104; 106, 211; 123, 217.

Indorser before delivery: See sec. 3117.

§ 3109. Agreement to indorse. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose. En. March 21, 1872.

Cal. Rep. Cit. 87, 617.

§ 3110. When may be made on separate paper. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto. En. March 21, 1872.

Cal. Rep. Cit. 87, 617; 126, 110.

§ 3111. Kinds of indorsement. An indorsement may be general or special. En. March 21, 1872.

§ 3112. General indorsement, what. A general indorsement is one by which no indorsee is named. En. March 21, 1872.

§ 3113. Special indorsement, what. A special indorsement specifies the indorsee. En. March 21, 1872.

Cal. Rep. Cit. 139, 580.

§ 3114. General indorsement, how made special. A negotiable instrument bearing a general indorsement cannot be afterward specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person. En. March 21, 1872.

§ 3115. Destruction of negotiability by indorser. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable. En. March 21, 1872.

Cal. Rep. Cit. 139, 580.

§ 3116. Implied warranty of indorser. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.
2. That he has a good title to it.
3. That the signatures of all prior parties are binding upon them.
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections thirty-one hundred and eighty-nine, thirty-two hundred and thirteen, thirty-two hundred and forty-eight, or thirty-two hundred and fifty-five. En. March 21, 1872. Am'd. 1873-4, 263.

Cal. Rep. Cit. 56, 445; 81, 510; 103, 324; 139, 574; 139, 580; 139, 584; 147, 170. Subd. 1—132, 482. Subd. 4—134, 242.

Between the engagements of maker and acceptor and of drawer and indorser this distinction exists, that the contract of the maker and acceptor is absolute to pay at maturity, and no presentment is necessary to charge them: Post, sec. 3130; while the contract of the drawer and indorser is conditional, being contingent upon the true presentment at maturity, and due notice in case it is not paid: Post, secs. 3141-3151; unless a sufficient cause intervene excusing the holder from the performance of this duty: Post. secs. 3155-3160.

Want or failure of consideration: See post, sec. 3122 and note.

Acceptance of bill of exchange admits genuineness of drawer's signature: See post, sec. 3199.

Drawer of bill of exchange on acceptance has rights of a first indorser: See post, sec. 3177.

§ 3117. Indorser, when liable to payee. One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon, as an indorser. En. March 21, 1872.

Cal. Rep. Cit. 62, 487; 77, 478; 87, 617; 94, 104; 120, 689; 120, 690; 120, 691; 132, 482; 133, 576; 147, 170.

Indorser defined: Sec. 3108.

§ 3118. Indorsement, without recourse. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement. En. March 21, 1872.

§ 3119. Same. Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement. En. March 21, 1872.

§ 3120. Indorsee privy to contract. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance. En. March 21, 1872.

Collateral security, etc.: Ante, sec. 2936.

§ 3121. Rights of accommodation indorser. (Repealed.) En. March 21, 1872. Rep. 1873-4, 263.

§ 3122. Effect of want of consideration. The want of consideration for the undertaking of a maker, acceptor, or indorser, of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration. En. March 21, 1872.

Cal. Rep. Cit. 64, 413; 83, 175; 106, 655.

Writing imports consideration: Sec. 1614.

§ 3123. Indorsee in due course, what. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer. En. March 21, 1872.

Cal. Rep. Cit. 68, 548; 69, 144; 83, 175; 106, 655; 128, 320.

Presumptive dishonor: See sec. 3133.

Checks are an exception to the rule of "after maturity": Sec. 3255, subd. 2.

§ 3124. Rights of indorsee in due course. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it. En. March 21, 1872.

Cal. Rep. Cit. 69, 144; 106, 655; 128, 320.

Assignment, effect on defense: See Code Civ. Proc., sec. 368.

Non-negotiable instruments, assignments of: Ante, sec. 1459.

§ 3125. Instrument left blank. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form. En. March 21, 1872.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

§ 3130. Effect of want of demand on principal debtor.
§ 3131. Presentment, how made.
§ 3132. Apparent maturity, when.
§ 3133. Presumptive dishonor of bill, payable after sight.
§ 3134. Apparent maturity of bill, payable at sight.
§ 3135. Apparent maturity of note.
§ 3136. Same.
§ 3137. Surrender of instrument, when a condition of payment.

§ 3130. Effect of want of demand on principal debtor. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an order of payment upon his part. En. March 21, 1872.

Cal. Rep. Cit. 79, 229; 82, 33; 131, 191.

Presentment of bill of exchange for acceptance: Post, secs. 3185 et seq.

Presentment of bill of exchange for payment: Post, secs. 3211 et seq.

Presentment in case of acceptance for honor: Post, secs. 3206, 3207.

§ 3131. Presentment, how made. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder, or his agent;

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;

3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes

more than one house, then at the place of residence, or business, of the principal debtor, if it can be found therein;

4. An instrument which does not specify a place for its payment must be presented to the place of residence, or business, of the principal debtor, or wherever he may be found, at the option of the presentor;

5. The instrument must be presented upon the day of its maturity, or, if it is payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and if it is payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

6. If the principal debtor has no place of business, or if his place of business, or residence, cannot, with reasonable diligence, be ascertained, presentment for payment is excused. En. March 21, 1872. Am'd. 1873-4, 263; 1905, 620.

The change consists in the insertion of the words "or his agent" after "holder." The design of the amendment is to conform the section in this respect to section 3186.—Code Commissioner's Note.

Cal. Rep. Cit. 64, 413; 64, 422; 79, 229; 82, 33; 82, 34. Subd. 5—107, 285.

See sec. 3132, infra.

Payable on demand: See secs. 3134, 3135, infra.

Presentment of bills of exchange for acceptance: See post, secs. 3185 et seq.

Presentment of bills of exchange for payment: See post, secs. 3211 et seq.

Bills of exchange, where payable: See post, sec. 3176.

Reasonable diligence: Post, sec. 3158.

§ 3132. Apparent maturity, when. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, becomes due, or when that is a holiday, the next business day. En. March 21, 1872.

Cal. Rep. Cit. 64, 412; 69, 144.

Apparent maturity: See post, secs. 3134, 3135.

§ 3133. Presumptive dishonor of bill, payable after sight. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored. En. March 21, 1872.

§ 3134. Apparent maturity of bill, payable at sight. The apparent maturity of a bill of exchange payable at sight or on demand, is:

1. If it bears interest, one year after its date; or

2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence to forward it for acceptance. En. March 21, 1872.

Cal. Rep. Cit. 68, 548.

Mere delay in presentment does not exonerate: Post, sec. 3214. Presentment not made within the time, and not excused, exonerates drawer and indorsers: Post, sec. 3213. Rule modified in case of checks: Post, sec. 3255.

§ 3135. Apparent maturity of note. The apparent maturity of a promissory note payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it it does not bear interest, six months after its date. En. March 21, 1872.

Cal. Rep. Cit. 74, 363; 74, 364; 79, 229; 82, 34; 98, 326.

Section 3214, post, applies also to promissory notes: See post sec. 3247.

Presentment not made within the time, and not excused, exonerates the indorsers: Post, sec. 3248.

§ 3136. Same. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section. En. March 21, 1872.

§ 3137. Surrender of instrument, when a condition of payment. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,

2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties; to indemnify him against any lawful claim thereon. En. March 21, 1872.

Cal. Rep. Cit. 82, 557.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

§ 3141. Dishonor, what.
§ 3142. Notice, by whom given.
§ 3143. Form of notice.
§ 3144. Notice, how served.
§ 3145. Notice, how served after indorser's death.
§ 3146. Notice given in ignorance of death, valid.
§ 3147. Notice, when to be given.
§ 3148. Notice of dishonor, when to be mailed.
§ 3149. Notice, how given by agent.
§ 3150. Additional time for notice by indorser.
§ 3151. Effect of notice of dishonor.

§ 3141. Dishonor, what. A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused. En. March 21, 1872.

Presentment for acceptance: See post, sec. 3186.

Dishonor of bill by nonacceptance: Post, secs. 3187, 3188, 3194.

Damages allowed on dishonor of foreign bills of exchange: See, post, secs, 3234-3238.

§ 3142. Notice, by whom given. Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given. En. March 21, 1872.

Cal. Rep. Cit. 55, 407.

Protest of bill of exchange: See post, sec. 3225.

Notice of protest: See post, sec, 3231.

Notice of dishonor to acceptor for honor: See secs. 3206, 3207.

§ 3143. Form of notice. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored. En. March 21, 1872.

Cal. Rep. Cit. 55, 407; 57, 330.

Notice of dishonor of foreign bills of exchange: Sec. 3225.

§ 3144. Notice, how served. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally at any place; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the postoffice most conveniently accessible from the place where the presentment was made, and paying the postage thereon. En. March 21, 1872.

Cal. Rep. Cit. 57, 330; 62, 262; 63, 368; 86, 456.

Notary's protest as evidence: See Pol. Code, sec. 795.

Foreign bills of exchange, notice of dishonor, how given: See post, sec, 3231.

§ 3145. Notice, how served after indorser's death. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section. En. March 21, 1872.

Cal. Rep. Cit. 99, 144.

§ 3146. Notice given in ignorance of death, valid. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid. En. March 21, 1872.

§ 3147. Notice, when to be given. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter. En. March 21, 1872.

Cal. Rep. Cit. 147, 170.

§ 3148. Notice of dishonor, when to be mailed. When notice of dishonor is given by mail, it must be deposited in the postoffice in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent. En. March 21, 1872.

§ 3149. Notice, how given by agent. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an in-

dorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a subagent, it is sufficient for each successive agent or subagent to give notice in like manner to his own principal. En. March 21, 1872.

§ 3150. Additional time for notice by indorser. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto. En. March 21, 1872.

§ 3151. Effect of notice of dishonor. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost. En. March 21, 1872.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

§ 3155. Notice of dishonor, when excused.
§ 3156. Presentment and notice, when excused.
§ 3157. Same.
§ 3158. Delay, when excused.
§ 3159. Waiver of presentment and notice.
§ 3160. Waiver of protest.

§ 3155. Notice of dishonor, when excused. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no postoffice communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto. En. March 21, 1872.

Cal. Rep. Cit. 86, 457.

Waiver of notice: See post, sec. 3159.

Subd. 1. Reasonable diligence: See ante, sec. 3131, subd. 6, wherein presentment is excused for the same reason.

Subd. 2. Notice by mail.—It is generally held that the notice should be addressed to the postoffice at or nearest

to the party's residence or place of business: See ante, sec. 3144, subd. 3.

Waiver of protest of foreign bill: Post, sec. 3232.

Excuse of presentment of bill of exchange and notice: Sec. 3220.

§ 3156. Presentment and notice, when excused. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored. En. March 21, 1872.

Cal. Rep. Cit. 64, 460; 101, 482.

§ 3157. Same. If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof or the maker has assigned all his estate to him as such security, presentment and notice to him are excused. En. March 21, 1872.

§ 3158. Delay, when excused. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence. En. March 21, 1872.

Delay in presentment for acceptance: See post, sec. 3219.

Delay in presenting bill for payment: Post, secs. 3213, 3214.

Reasonable diligence: See ante, secs. 3131, 3155; post, sec. 3213.

§ 3159. Waiver of presentment and notice. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment. En. March 21, 1872.

§ 3160. Waiver of protest. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice. En. March 21, 1872.

Protest of foreign bills: See secs. 3225 et seq.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS

§ 3164. Obligation of party, when extinguished.
§ 3165. Revival of obligation. (Repealed.)

§ 3164. Obligation of party, when extinguished. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof and entitled by its terms to payment. En. March 21, 1872.

Extinction of obligations in general: See ante, secs. 1473 et seq.

§ 3165. Revival of obligation. (Repealed.) En. March 21, 1872. Rep. 1873-4, 264.

CHAPTER II.

BILLS OF EXCHANGE.

Article I. Form and Interpretation, §§ 3171-3177.
II. Days of Grace, § 3181.
III. Presentment for Acceptance, §§ 3185-3189.
IV. Acceptance, §§ 3193-3199.
V. Acceptance or Payment for Honor, §§ 3203-3207.
VI. Presentment for Payment, §§ 3211-3214.
VII. Excuse of Presentment and Notice, §§ 3218-3220.
VIII. Foreign Bills, §§ 3224-3233.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

§ 3171. Bill of exchange, what.
§ 3172. Drawee, in case of need.
§ 3173. Bill in parts of a set.
§ 3174. When must be in a set.
§ 3175. Presentment, etc., of part of set.
§ 3176. Bill, where payable.
§ 3177. Rights and obligations of drawer.

§ 3171. Bill of exchange, what. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money. En. March 21, 1872.

§ 3172. Drawee, in case of need. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need. En. March 21, 1872.

Acceptance or payment for honor: See post, secs. 3203 et seq.

Presentment to drawee in case of need: Post, sec. 3188.

§ 3173. Bill in parts of a set. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set. En. March 21, 1872.

Damages for nonpayment of foreign bill drawn in parts: See post, sec. 3234.

§ 3174. When must be in a set. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it. En. March 21, 1872.

§ 3175. Presentment, etc., of part of set. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole. En. March 21, 1872.

Presentment for acceptance. See post, sec. 3186.

Presentment to joint drawees: See post, sec. 3187.

§ 3176. Bill, where payable. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable; or,

2. If it specify no place of payment, then at the place to which it is addressed; or,

3. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for nonpayment. En. March 21, 1872. Am'd. 1873-4, 264; 1905, 620.

Negotiable instrument specifying place of payment: See secs. 3150 et seq.

§ 3177. Rights and obligations of drawer. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument. En. March 21, 1872.

Cal. Rep. Cit. 134, 242.

Rights of indorser: See ante, secs. 3108 et seq., 3130 et seq., 3141 et seq.

Contract of indorser: Ante, sec. 3116.

ARTICLE II.

DAYS OF GRACE.

§ 3181. Days of grace.

§ 3181. Days of grace. Days of grace are not allowed. En. March 21, 1872.

Cal. Rep. Cit. 74, 364; 107, 284.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

§ 3185. When a bill may be presented.
§ 3186. Presentment, how made.
§ 3187. Presentment to joint drawees.
§ 3188. When presentment to be made to drawee in case of need.
§ 3189. Presentment, when must be made.

§ 3185. When a bill may be presented. At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored. En. March 21, 1872.

Acceptance, how made: Post, secs. 3193 et seq.

Presentment in case of acceptance for honor: Post, secs. 3206, 3207.

§ 3186. Presentment, how made. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent.

2. It must be presented on a business day, and within reasonable hours.

3. It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,

4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for nonacceptance. En. March 21, 1872. Am'd. 1873-4, 265.

Presentment of part of set: Ante, sec. 3175.

Presentment for payment, generally: Ante, secs. 3130 et seq.

Presentment of bill of exchange for payment: See post, sces. 3211 et seq.

§ 3187. Presentment to joint drawees. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others. En. March 21, 1872.

§ 3188. When presentment to be made to drawee in case of need. A bill of exchange which specifies a drawee in case in need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored. En. March 21, 1872.

Drawee in case of need: Ante, sec. 3172.

§ 3189. Presentment, when must be made. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused. En. March 21, 1872.

ARTICLE IV.

ACCEPTANCE.

§ 3193. Acceptance, how made.
§ 3194. Holder entitled to acceptance on face of bill.
§ 3195. What acceptance sufficient with consent of holder.
§ 3196. Acceptance by separate instrument.
§ 3197. Promise to accept, when equivalent to acceptance.
§ 3198. Cancellation of acceptance.
§ 3199. What is admitted by acceptance.

§ 3193. Acceptance, how made. An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words. En. March 21, 1872.

Acceptance for honor: See post, sec. 3203.

§ 3194. Holder entitled to acceptance on face of bill. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance. En. March 21, 1872.

Acceptance on separate paper: See post, secs. 3195, 3196.

§ 3195. What acceptance sufficient with consent of holder. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms. En. March 21, 1872.

Acceptance on separate paper: See, also, next section.

Acceptance, generally: Ante, sec. 3193.

§ 3196. Acceptance by separate instrument. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration. En. March 21, 1872.

§ 3197. Promise to accept, when equivalent to acceptance. An unconditional promise in writing, to accept a bill of exchange is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value. En. March 21, 1872. Am'd. 1905, 621.

The change consists in the omission of the words "or other good consideration," as they occur after "value." The presence of these words implies that a consideration other than "for value" may support a promise in writing to accept a bill. Such is not intended to be the law.—Code Commissioner's Note.

Cal. Rep. Cit. 134, 191; 134, 193; 134, 196; 147, 75.

§ 3198. Cancellation of acceptance. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance. En. March 21, 1872.

Cal. Rep. Cit. 113, 695.

§ 3199. What is admitted by acceptance. The acceptance of a bill of exchange admits the signature of a drawer, but does not admit the signature of any indorser to be genuine. En. March 21, 1872. Am'd. 1873-4, 265.

Genuineness of signature warranted by indorser: See ante, sec. 3116, subd. 3.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

§ 3203. When bill may be accepted or paid for honor.
§ 3204. Holder of bill of exchange bound to accept payment for honor.
§ 3205. Acceptance for honor, how made.
§ 3206. How enforced.
§ 3207. Notice of dishonor not excused by acceptance for honor.

§ 3203. When bill may be accepted or paid for honor. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto. En. March 21, 1872.

Drawee in case of need: See ante, sec. 3172.

Payment of foreign bill for honr: Post, sec. 3233.

Acceptor for honor is in effect the maker of a promissory note: Post, sec. 3246.

§ 3204. Holder of bill of exchange bound to accept payment for honor. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. En. March 21, 1872.

Acceptance, how made: See ante, secs. 3193 et seq.

Acceptance for honor, how made: Post, sec. 3205.

§ 3205. Acceptance for honor, how made. An acceptor or payor for honor must write a memorandum upon the bill stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them. En. March 21, 1872.

Acceptance, how made generally: See ante, secs. 3193 et seq.

Reimbursement.—In case of foreign bills of exchange, the one who pays for honor must declare in the presence of a person authorized to make protest for whose honor he pays the same: Post, sec. 3233.

§ 3206. How enforced. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like

manner as to an indorser; after which the acceptor for honor must pay the bill. En. March 21, 1872.

Presentment for acceptance: Ante, sec. 3186.

Presentment of bill of exchange for payment: See post, secs. 3211 et seq.

Presentment of negotiable instruments generally: Ante, secs. 3130 et seq.

Notice of dishonor of foreign bill: See post, secs. 3225 et eq. s

Notice of dishonor, generally: See ante, secs. 3142 et seq.

§ 3207. Notice of dishonor not excused by acceptance for honor. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee. En. March 21, 1872.

Presentment of bill of exchange and notice, when excused: See post, secs, 3218-3220.

Excuse of presentment and notice generally: Ante, secs. 3155 et seq.

Notice of dishonor: See post, sec. 3231, for the giving notice of protest, and, ante, secs. 3142 et seq., for the manner of giving notice of dishonor generally.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

§ 3211. Presentment, when bill not accepted, where made.
§ 3212. Presentment of bill, payable at particular place.
§ 3213. Effect of delay in presentment, in certain cases.
§ 3214. Effect in other cases.

§ 3211. Presentment, when bill not accepted, where made. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary. En. March 21, 1872.

Presentment of negotiable instruments for payment: See ante, secs. 3130 et seq.

Presentment for acceptance: See ante, secs, 3186 et seq.

§ 3212. Presentment of bill, payable at particular place. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when pre-

sentment for payment is necessary, and need not be presented elsewhere. En. March 21, 1872.

Place of payment, presentment at: See ante, sec. 3131, subd. 3.

§ 3213. Effect of delay in presentment, in certain cases. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused. En. March 21, 1872.

See, generally, ante, secs. 2131, 3155.

Apparent maturity of bill of exchange: See ante, sec. 3134.

§ 3214. Effect in other cases. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto. En. March 21, 1872.

Cal. Rep. Cit. 74, 364.

Delay, when excused: See ante, sec. 3158, and post, sec. 3219.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

§ 3218. Presentment, when excused.
§ 3219. Delay, when excused.
§ 3220. Presentment and notice, when excused.

§ 3218. Presentment, when excused. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it. En. March 21, 1872.

Excuse of presentment and notice, generally: See ante, secs. 3155 et seq.

§ 3219. Delay, when excused. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control. En. March 21, 1872.

Delay, when excused: See ante, secs. 3158, 3214.

Delay in presentment of check: Post, sec. 3255.

§ 3220. Presentment and notice, when excused. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or, if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same. En. March 21, 1872.

Cal. Rep. Cit. 90, 303.

ARTICLE VIII.

FOREIGN BILLS.

§ 3224. Definitions.
§ 3225. Protest necessary.
§ 3226. Protest, by whom made.
§ 3227. Protest, how made.
§ 3228. Protest, where made.
§ 3229. Protest, when to be made.
§ 3230. Protest, when excused.
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§ 3232. Waiver of protest.
§ 3233. Declaration before payment for honor.
§ 3234. Damages allowed on dishonor of foreign bill.
§ 3235. Rate of damages.
§ 3236. Interest on amount of protested bill.
§ 3237. Damages, how estimated.
§ 3238. Same.

§ 3224. Definitions. An inland bill of exchange is one drawn and payable within this state. All others are foreign. En. March 21, 1872.

Form and interpretation of bills of exchange: Ante, secs. 3171 et seq.

§ 3225. Protest necessary. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest. En. March 21, 1872.

Dishonor of negotiable instruments generally: See ante, secs, 3141 et seq.

Waiver of protest does not waive presentment and notice in the case of a foreign bill of exchange: Ante, sec. 3160.

§ 3226. Protest, by whom made. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses. En. March 21, 1872.

§ 3227. Protest, how made. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged. En. March 21, 1872.

Protest of notary is prima facie evidence: See Pol. Code, sec. 795.

§ 3228. Protest, where made. A protest for nonacceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for nonpayment in the city or town in which it is presented for payment. En. March 21, 1872.

§ 3229. Protest, when to be made. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter. En. March 21, 1872.

§ 3230. Protest, when excused. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment. En. March 21, 1872.

Excuse of presentment and notice: Ante, secs. 3214, 3218 et seq.

§ 3231. Notice of protest, how given. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest. En. March 21, 1872.

Notice of dishonor, how given: See ante, secs. 3142 et seq.

§ 3232. Waiver of protest. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers. En. March 21, 1872.

Notice of dishonor: See ante, secs. 3142 et seq.

Waiver of notice: See ante, sec. 3155, subd. 4.

§ 3233. Declaration before payment for honor. On who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement. En. March 21, 1872.

Payment for honor: See ante, sec. 3208.

§ 3234. Damages allowed on dishonor of foreign bill. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this state, and protested for nonacceptance or nonpayment. En. March 21, 1872.

§ 3235. Rate of damages. Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon a person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;

2. If drawn upon a person out of this state, five dollars upon each one hundred dollars of the principal sum specified in the bill;

3. If drawn upon a person in any place in a foreign country, fifteen dollars upon each one hundred dollars of the principal sum specified in the bill. En. March 21, 1872. Am'd. 1905, 621.

The change consists in the substitution of the word "a" for "any" before "person"; in the omission of the words "but in any of the other states west of the Rocky Mountains" after "state"; in the omission of the third subdivision; and in the renumbering of the fourth subdivision rendered necessary thereby. As it now stands the section divides for its purposes that part of the United States not included within this state, in two parts, viz.: the states west, and the states east, of the Rocky Mountains, thus apparently ignoring the states now existing situated partly on each side of those mountains. It has seemed best to abolish the distinction altogether and to provide a uniform rate of damage for all the states, irrespective of their position with reference to those mountains.—Code Commissioner's Note.

§ 3236. Interest on amount of protested bill. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section. En. March 21, 1872.

§ 3237. Damages, how estimated. If the amount of a protested bill of exchange is expressed in money of the

United States, damages are estimated upon such amount without regard to the rate of exchange. En. March 21. 1872.

§ 3238. **Same.** If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated and where such bills are currently sold. En. March 21, 1872.

CHAPTER III.

PROMISSORY NOTE.

§ 3244. Promissory note, what.
§ 3245. Certain instruments promissory notes.
§ 3246. Bill of exchange, when converted into a note.
§ 3247. Certain sections applicable to notes.
§ 3248. Effect of delay in presentment.

§ 3244. **Promissory note, what.** A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money. En. March 21, 1872.

Cal. Rep. Cit. 103, 324.

Place of payment not specified: Se ante, sec. 3100.

Interpretation of negotiable instruments, generally. See ante, secs. 3099 et seq.

§ 3245. **Certain instruments promissory notes.** An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note. En. March 21, 1872.

Negotiable instrument payable to order of maker: See ante, sec. 3102.

§ 3246. **Bill of exchange, when converted into a note.** A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated. En. March 21, 1872.

Acceptor for honor: Ante, secs. 3203 et seq.

§ 3247. **Certain sections applicable to notes.** Chapter I of this title, and sections 3181 and 3214 of this code, apply to promissory notes. En. March 21, 1872.

Cal. Rep. Cit. 74, 364.

Chapter I of this title: See secs. 3086-3165.

§ 3248. Effect of delay in presentment. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused. En. March 21, 1872.

Cal. Rep. Cit. 74, 364.

Apparent maturity of a promissory note: Ante, sec. 3135.

Presentment, when excused: See, generally, secs. 3155 et seq., ante.

CHAPTER IV.

CHECKS.

§ 3254. Check, what.
§ 3255. Rules applicable to checks.

§ 3254. Check, what. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest. En. March 21, 1872.

Cal. Rep. Cit. 134, 241; 138, 185.

§ 3255. Rules applicable to checks. A check is subject to all the provisions of this code concerning bill of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period. En. March 21, 1872.

Cal. Rep. Cit. Subd. 1—134, 242.

Delay in presentment of bills of exchange: Ante, secs. 3214, 3218-3220.

Indorsee in due course: Ante, sec. 3123.

CHAPTER V.

BANK NOTES AND CERTIFICATES OF DEPOSIT.

§ 3261. Bank note negotiable after payment.
§ 3262. Title acquired by indorsee. (Repealed.)

§ 3261. Bank note negotiable after payment. A bank note remains negotiable, even after it has been paid by the maker. En. March 21, 1872.

§ 3262. Title acquired by indorsee. (Repealed.) En. March 21, 1872. Rep. 1873-4, 265.

TITLE XVI.

GENERAL PROVISIONS.

§ 3268. Parties may waive provisions of code.

§ 3268. Parties may waive provisions of code. Except where it is otherwise declared, the provisions of the foregoing fifteen titles of this part in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the Interpretation of Contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy. En. March 21, 1872.

Cal. Rep. Cit. 101, 641.

Interpretation of contracts: See ante, secs. 1635 et seq.

DIVISION FOURTH.

Part I. Relief, §§ 3274-3423.

II. Special Relations of Debtor and Creditor, §§ 3429-3473.

III. Nuisance, §§ 3479-3503.

IV. Maxims of Jurisprudence, §§ 3509-3543.

PART I.

RELIEF.

Title I. Relief in General, §§ 3274, 3275.
II. Compensatory Relief, §§ 3281-3360.
III. Specific and Preventive Relief, §§ 3366-3423.

TITLE I.

RELIEF IN GENERAL.

§ 3274. Species of relief.
§ 3275. Relief in case of forfeiture.

§ 3274. Species of relief. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code. En. March 21, 1872.

Cal. Rep. Cit. 117, 379.

§ 3275. Relief in case of forfeiture. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty. En. March 21, 1872.

Cal. Rep. Cit. 97, 654; 120, 420.

TITLE II.

COMPENSATORY RELIEF.

Chapter I. Damages in General, §§ 3281-3294.
II. Measure of Damages, §§ 3300-3360.

CHAPTER I.

DAMAGES IN GENERAL.

Article I. General Principles, §§ 3281-3283.
II. Interest as Damages, §§ 3287-3290.
III. Exemplary Damages, § 3294.

ARTICLE I.

GENERAL PRINCIPLES.

§ 3281. Person suffering detriment may recover damages.
§ 3282. Detriment, what.
§ 3283. Injuries resulting or probable after suit brought.

§ 3281. Person suffering detriment may recover damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages. En. March 21, 1872.

Cal. Rep. Cit. 110, 316; 110, 385; 123, 44; 136, 131.

Exemplary damages: Post, sec. 3294. Damages are exclusive of exemplary damages and interest except where those are expressly mentioned: Post, sec. 3357.

Damages must be reasonable: Post, sec. 3359.

Damages for torts: Post, secs. 3333 et seq.

Damages for breach of contract: Post, secs. 3300 et seq.

§ 3282. Detriment, what. Detriment is a loss or harm suffered in person or property. En. March 21, 1872.

§ 3283. Injuries resulting or probable after suit brought. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof or certain to result in the future. En. March 21, 1872.

Cal. Rep. Cit. 75, 563; 117, 312; 123, 432; 126, 7; 130, 287; 136, 130.

ARTICLE II.

INTEREST AS DAMAGES.

§ 3287. Person entitled to recover damages may recover interest thereon.
§ 3288. In actions other than contract.
§ 3289. Limit of rate by contract.
§ 3290. Acceptance of principal waives claim to interest.

§ 3287. Person entitled to recover damages may recover interest theron. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as

the debtor is prevented by law, or by the act of the creditor, from paying the debt. En. March 21, 1872.

Cal. Rep. Cit. 57, 357; 68, 374; 72, 330; 72, 509; 89, 635; 103, 162; 106, 234; 106, 447; 106, 572; 106, 573; 110, 316; 114, 400; 121, 237; 126, 15; 130, 430; 141, 657; 146, 285.

As to what is legal rate: See ante, sec. 1917.
Interest in actions for conversion: Post, sec. 3336.

§ 3288. In actions other than contract. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. En. March 21, 1872.

Cal. Rep. Cit. 72, 509; 106, 448; 109, 99.
Interest in trover and conversion: Post, sec. 3336.

§ 3289. Limit of rate by contract. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. En. March 21, 1872.

Cal. Rep. Cit. 136, 371.

§ 3290. Acceptance of principal waives claim to interest. Accepting payment of the whole principal, as such, waives all claim to interest. En. March 21, 1872.

Cal. Rep. Cit. 100, 22; 133, 194.

ARTICLE III.

EXEMPLARY DAMAGES.

§ 3294. Exemplary damages, in what cases allowed.

§ 3294. Exemplary damages, in what cases allowed. In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages may recover damages for the sake of example and by way of punishing the defendant. En. March 21, 1872. Am'd. 1905, 621.

The change consists in the substitution of the words "express or implied" for "actual or presumed," and in the substitution of the words "the plaintiff, in addition to the actual damages, may recover," in place of the words "the jurors, in addition to actual damages, may give." As the section now stands it appears to apply to jury trials only. This, of course, was not the intention of the legislature.—Code Commissioner's Note.

Cal. Rep. Cit. 68, 32; 74, 150; 75, 566; 76, 534; 77, 212; 77, 312; 80, 137; 80, 138; 85, 192; 93, 71; 97, 6; 101, 413; 105, 289; 105, 290; 107, 269; 114, 450; 121, 218; 132, 319; 138, 414; 139, 518; 139, 521; 140, 363; 140, 364; 142, 260; 142, 261.

Damages for wrongs, generally: See post, secs. 3333 et seq.

Penal damages: See post, secs. 3344 et seq.

CHAPTER II.

MEASURE OF DAMAGES.

Article I. Damages for Breach of Contract, §§ 3300-3319.
II. Damages for Wrongs, §§ 3333-3341.
III. Penal Damages, §§ 3344-3348.
IV. General Provisions, §§ 3353-3360.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

§ 3300. Measure of damages for breach of contract.
§ 3301. Damages must be certain.
§ 3302. Breach of contract to pay liquidated sum.
§ 3303. Dishonor of foreign bills of exchange.
§ 3304. Detriment caused by breach of covenant of seisin, etc., what is.
§ 3305. Detriment caused by breach of covenant against encumbrances, is what.
§ 3306. Breach of agreement to convey real property.
§ 3307. Breach of agreement to buy real property.
§ 3308. Breach of agreement to sell personal property not paid for.
§ 3309. Breach of agreement to sell personal property paid for.
§ 3310. Breach of agreement to pay for personal property sold.
§ 3311. Breach of agreement to buy personal property.
§ 3312. Breach of warranty of title to personal property.
§ 3313. Breach of warranty of quality of personal property.
§ 3314. Breach of warranty of quality for special purpose.
§ 3315. Breach of carrier's obligation to receive goods, etc.
§ 3316. Breach of carrier's obligation to deliver.
§ 3317. Carrier's delay.
§ 3318. Breach of warranty of authority.
§ 3319. Breach of promise of marriage.

§ 3300. Measure of damages for breach of contract. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things would be likely to result therefrom. En. March 21, 1872. Am'd. 1873-4, 265.

Cal. Rep. Cit. 67, 408; 67, 466; 89, 466; 97, 493; 98, 214; 100, 97; 102, 68; 103, 458; 116, 244; 140, 342.

Damages for revoking submission to arbitration: See sec. 1290, Code Civ. Proc.

§ 3301. Damages must be certain. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin. En. March 21, 1872.

Cal. Rep. Cit. 66, 538; 101, 280; 140, 342.

§ 3302. Breach of contract to pay liquidated sum. The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon. En. March 21, 1872.

Cal. Rep. Cit. 76, 623; 79, 223; 89, 466; 107, 585.

§ 3303. Dishonor of foreign bills of exchange. For the dishonor of foreign bills of exchange the damages are prescribed by sections 3235, 3237, and 3238. En. March 21, 1872.

§ 3304. Detriment caused by breach of covenant of seisin, etc., what is. The detriment caused by the breach of a covenant of "seisin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years;

3. Any expenses properly incurred by the covenantee in defending his possession. En. March 21, 1872.

Cal. Rep. Cit. 70, 84; 136, 29.

§ 3305. Detriment caused by breach of covenant against incumbrances, is what. The detriment caused by the breach of a covenant against encumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount. En. March 21, 1872.

§ 3306. Breach of agreement to convey real property. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land. En. March 21, 1872.

Cal. Rep. Cit. 55, 41; 78, 535; 81, 217; 89, 476; 116, 517; 121, 46; 121, 520; 123, 5; 123, 10; 147, 302; 147, 305.

§ 3307. Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him. En. March 21, 1872.

Cal. Rep. Cit. 87, 450; 123, 5; 123, 10; 125, 567; 138, 104.

§ 3308. Breach of agreement to sell personal property not paid for. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled. En. March 21, 1872.

Cal. Rep. Cit. 67, 479.

§ 3309. Breach of agreement to sell personal property paid for. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion. En. March 21, 1872.

Cal. Rep. Cit. 96, 154.
Conversion, measure of damages for: Post, sec. 3336.

§ 3310. Breach of agreement to pay for personal property sold. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title of which is vested in him, is deemed to be the contract price. En. March 21, 1872.

§ 3311. Breach of agreement to buy personal property. The detriment caused by the breach of a buyer's agree-

ment to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it. En. March 21, 1872.

Cal. Rep. Cit. 77, 143; 90, 520; 94, 17; 106, 447; 106, 448; 120, 420. Subd. 1—143, 438. Subd. 2—106, 446; 109, 248; 144, 84.

§ 3312. Breach of warranty of title to personal property. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner. En. March 21, 1872.

§ 3313. Breach of warranty of quality of personal property. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time. En. March 21, 1872.

Cal. Rep. Cit. 60, 287; 75, 562; 78, 610; 103, 417; 103, 418; 103, 419; 103, 420.

§ 3314. Breach of warranty of quality for special purpose. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose. En. March 21, 1872.

Cal. Rep. Cit. 65, 274; 75, 562; 78, 610.

§ 3315. Breach of carrier's obligation to receive goods, etc. The detriment caused by the breach of a carrier's

obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed. En. March 21, 1872.

Obligation to receive freight: Sec. 2169.

§ 3316. Breach of carrier's obligation to deliver. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery. En. March 21, 1872.

Cal. Rep. Cit. 120, 159.

Delivery of property by carrier: See ante, secs. 2118, 2119.

Stoppage in transitu: See ante, secs. 3076 et seq.

§ 3317. Carrier's delay. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery. En. March 21, 1872.

Carrier's liability for delay: See ante, sec. 2196.

§ 3318. Breach of warranty of authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal. En. March 21, 1872.

Warranty of authority by one assuming to act as agent: See ante, sec. 2342.

§ 3319. Breach of promise of marriage. The damages for the breach of a promise of marriage rest in the sound discretion of the jury. En. March 21, 1872.

ARTICLE II.

DAMAGES FOR WRONGS.

§ 3333. Breach of obligation other than contract.
§ 3334. Wrongful occupation of real property.
§ 3335. Willful holding over.
§ 3336. Conversion of personal property.
§ 3337. Same.
§ 3338. Damages of lienor.
§ 3339. Seduction.
§ 3340. Injuries to animals.
§ 3341. Same.

§ 3333. Breach of obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. En. March 21, 1872.

Cal. Rep. Cit. 53, 58; 56, 218; 58, 242; 58, 357; 82, 599; 88, 163; 88, 164; 92, 174; 109, 106; 111, 683; 114, 451; 130, 314; 131, 151; 139, 518; 139, 521; 141, 613.

Negligent acts in relation to fire, treble damages: See Pol. Code, sec. 3344.

Recorder liable for treble damages for neglect, mistake or misconduct: See Pol. Code, sec. 4244.

Sheriff, liability of for neglect or misconduct: See Pol. Code, secs. 4179, 4182-4184.

§ 3334. Wrongful occupation of real property. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 3335, 3344, and 3345 of this code, or section 1174 of the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession. En. March 21, 1872.

Cal. Rep. Cit. 72, 330; 77, 472; 125, 566.

§ 3335. Willful holding over. For willfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such ter-

mination, the measure of damages is the value of the profits received during such holding over. En. March 21, 1872.

Cal. Rep. Cit. 125, 566.

Termination of trustee's estate: Ante, sec. 871.

§ 3336. **Conversion of personal property.** The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion, with the interest from that time, or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

2. A fair compensation for the time and money properly expended in pursuit of the property. En. March 21, 1872. Am'd. 1873-4, 266; 1877-8, 90.

Cal. Rep. Cit. 50, 115; 53, 278; 53, 279; 53, 280, 54, 146; 54, 194; 54, 195; 57, 326; 58, 242; 58, 243; 61, 634; 71, 69; 76, 70; 77, 279; 79, 183; 85, 194; 85, 195; 86, 461; 86, 462; 90, 14; 91, 121; 91, 122; 92, 173; 96, 154; 112, 214; 115, 49; 130, 193; 131, 151; 132, 319; 136, 541. Subd. 2—130, 236.

Compare sec. 3309, ante.

§ 3337. **Same.** The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent. En. March 21, 1872.

§ 3338. **Damages of lienor.** One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 3336 for loss of time and expenses. En. March 21, 1872.

Cal. Rep. Cit. 71, 70; 71, 71; 91, 122; 126, 290; 128, 226.

Damage for conversion of personalty, generally: Sec. 3336.

Levy on mortgaged chattel: See, as to duty of officer, ante, sec. 2969.

§ 3339. **Seduction.** The damages for seduction rest in the sound discretion of the jury. En. March 21, 1872.

Seduction, action by unmarried female: Code Civ. Proc., sec. 374.

Seduction, actions by parent or guardian: Code Civ. Proc., sec. 375.

§ 3340. **Injuries to animals.** For wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given. En. March 21, 1872.

Cal. Rep. Cit. 93, 394.

Dogs are property: Pen. Code, sec. 491; injury to: Pen. Code, sec. 597.

Exemplary damages, generally: See sec. 3294.

§ 3341. **Same.** The owner, possessor, or harborer of any dog or other animal, that shall kill, worry, or wound any sheep, angora goat, or cashmere goat, or poultry, shall be liable to the owner of the same for the damages and costs of suit, to be recovered in any court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this chapter, it shall not be necessary for the plaintiff to show that the owner, possessor, or harborer of such dog or other animal, had knowledge of the fact that such dog or other animal would kill, wound or worry sheep, goats, or poultry.

2. Any person on finding any dog or dogs, or other animal, not on the premises of the owner or possessor of such dog or dogs, or other animal, worrying, wounding, or killing any sheep, angora or cashmere goats, may, at the time of finding such dog or dogs, or other animal, kill the same, and the owner or owners thereof shall sustain no action for damages against any person so killing such dog or dogs, or other animal. En. Stats. 1883, 283. Am'd. 1903, 54.

Cal. Rep. Cit. Subd. 2—80, 548.

ARTICLE III.

PENAL DAMAGES.

§ 3344. Failure to quit, after notice.
§ 3345. Tenant willfully holding over.
§ 3346. Injuries to trees, etc.
§ 3346a. Damages for firing woods.
§ 3347. Injuries inflicted in a duel.
§ 3348. Same.

§ 3344. Failure to quit, after notice. If any tenant give notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice. En. March 21, 1872.

Cal. Rep. Cit. 125, 566.

§ 3345. Tenant willfully holding over. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice. En. March 21, 1872.

Cal. Rep. Cit. 125, 566.

Damages for unlawful detainer: See Code Civ. Proc., secs. 735, 1174 et seq.

§ 3346. Injuries to trees, etc. For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment. En. March 21, 1872.

Cal. Rep. Cit. 108, 207; 139, 560.

Damages for cutting down and carrying away trees: See Code Civ. Proc., sec. 733.

§ 3346a. Damages for firing woods. Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured. En. Stats. 1905, 621.

The new section incorporates into this Code the principle now declared in section 3344 of the Political Code.—Code Commissioner's Note.

§ 3347. Injuries inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court. En. March 21, 1872.

Duels and challenges: See Pen. Code, secs. 225-232.

§ 3348. Same. If any person slays or permanently disables another person in a duel in this state, the slayer is liable for and must pay all debts of the person slain or permanently disabled. En. March 21, 1872.

ARTICLE IV.

GENERAL PROVISIONS.

§ 3353. Value, how estimated in favor of seller.
§ 3354. Value, how estimated in favor of buyer.
§ 3355. Property of peculiar value.
§ 3356. Value of thing in action.
§ 3357. Damages allowed in this chapter, exclusive of others.
§ 3358. Limitation of damages.
§ 3359. Damages to be reasonable.
§ 3360. Nominal damages.

§ 3353. Value, how estimated in favor of seller. In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale. En. March 21, 1872.

Cal. Rep. Cit. 94, 18; 106, 446; 140, 632.

§ 3354. Value, how estimated in favor of buyer. In estimating damages, excepted as provided by sections 3355 and 3356, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase. En. March 21, 1872.

Cal. Rep. Cit. 67, 479; 91, 559.

§ 3355. Property of peculiar value. Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof, before incurring a liability to damages in respect thereof, or against a willful wrongdoer. En. March 21, 1872.

§ 3356. Value of thing in action. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner. En. March 21, 1872. Am'd. 1873-4, 266.

§ 3357. Damages allowed in this chapter, exclusive of others. The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned. En. March 21, 1872.

Cal. Rep. Cit. 106, 447.

Exemplary damages: Ante, sec. 3294.
Interest: Ante, secs. 3287-3290.

§ 3358. Limitation of damages. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on Exemplary Damages and Penal Damages, and in sections 3319, 3339, and 3340. En. March 21, 1872.

Cal. Rep. Cit. 90, 520.

Exemplary damages: Ante, sec. 3294.

Penal damages: Ante, secs. 3344-3348.

§ 3359. Damages to be reasonable. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered. En. March 21, 1872.

Liquidated damages and penalty: See ante, secs. 1670, 1671.

§ 3360. Nominal damages. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages. En. March 21, 1872.

Cal. Rep. Cit. 123, 431; 139, 520.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

Chapter I. General Principles, §§ 3366-3369.
II. Specific Relief, §§ 3375-3414.
III. Preventive Relief. §§ 3420-3423.

CHAPTER I.

GENERAL PRINCIPLES.

§ 3366. Specific relief, etc., when allowed.
§ 3367. Specific relief, how given.
§ 3368. Preventive relief, how given.
§ 3369. Not to enforce penalty, etc.

§ 3366. Specific relief, etc., when allowed. Specific or preventive relief may be given as provided by the laws of this state. En. March 21, 1872. Am'd. 1905, 622.

The change consists in the substitution of the words "as provided by the laws of this state," in place of the words "in the cases specified in this title and in no others." The purpose is to enlarge the scope of the section.—Code Commissioner's Note.

Cal. Rep. Cit. 71, 69; 110, 642; 117, 380; 117, 381; 139, 474.

Possession of real property: Post, secs. 3375 et seq.

Possession of personal property: Post, secs. 3379 et seq.

Specific performance of obligations: Post, secs. 3384 et seq.

Revision of contracts: Post, secs. 3399 et seq.

Rescission of contracts: Ante, secs. 1688 et seq.; post, secs. 3406 et seq.

Cancellation of instruments: Post, secs. 3412 et seq.

Injunctions: See post, secs. 3420 et seq.

§ 3367. Specific relief, how given. Specific relief is given:

1. By taking possession of a thing and delivering it to a claimant;

2. By compelling a party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages. En. March 21, 1872.

Cal. Rep. Cit. Subd. 2—142, 46.

See secs. 1084-1097, writ of mandate, Code Civ. Proc.; see, also, titles "Lien," "Contesting Elections," "Discharge of Persons Imprisoned on Civil Process," "Forcible Entry and Detainer," "Proceedings Supplementary to Execution," etc., Code Civ. Proc.

See post, secs. 3375 et seq., for classification of the instances in which specific relief is given.

§ 3368. Preventive relief, how given. Preventive relief is given by prohibiting a party from doing that which ought not to be done. En. March 21, 1872.

Injunction: See secs. 525-533, Code Civ. Proc.

Prohibition: See secs. 1102-1105, Code Civ. Proc.

Preventive relief generally: See post, secs. 3420 et seq. While section 3420 says that "preventive relief is granted by injunction, provisional or final," the code commissioners say, citing that section, that "the Code of Civil Procedure provides other remedies," and refers to writs of prohibition, certiorari, and proceedings for contempt.

Certiorari: See secs. 1067 et seq., Code Civ. Proc.

Contempt: See secs. 1209-1222, Code Civ. Proc.

§ 3369. Not to enforce penalty, etc. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty for forfeiture in any case. En. March 21, 1872.

Cal. Rep. Cit. 138, 665.

CHAPTER II.

SPECIFIC RELIEF.

Article I. Possession of Real Property, § 3375.
II. Possession of Personal Property, §§ 3379-3380.
III. Specific Performance of Obligations, §§ 3384-3395.
IV. Revision of Contracts, §§ 3399-3402.
V. Rescission of Contracts, §§ 3406-3408.
VI. Cancellation of Instruments, §§ 3412-3414.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

§ 3375. Judgment for possession or title.

§ 3375. Judgment for possession or title. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed

by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property. En. March 21, 1872.

Actions concerning real estate: See Code Civ. Proc., secs. 738-748.

Writ of restitution: See Code Civ. Proc., sec. 957.

Specific enforcement of contract to convey realty: See post, secs. 3384 et seq.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

§ 3379. Judgment for delivery.
§ 3380. Specific delivery.

§ 3379. Judgment for delivery. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure. En. March 21, 1872.

Claim and delivery: Code Civ. Proc., secs. 509-520.

Breach of agreement to transfer personalty may be compensated in damages: Post, sec. 3387.

§ 3380. Specific delivery. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession. En. March 21, 1872. Am'd. 1873-4, 266.

Breach of agreement to transfer personalty: See post, sec. 3387.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 3384. Specific performance.
§ 3385. Remedy mutual. (Repealed.)
§ 3386. No remedy unless mutual.
§ 3387. Distinction between real and personal property.
§ 3388. Contract signed by one party only may be enforced by other.
§ 3389. Liquidation of damages not a bar to specific performance.
§ 3390. What cannot be specifically enforced.
§ 3391. What parties cannot be compelled to perform.
§ 3392. What parties cannot have specific performance in their favor.
§ 3393. Specific performance not required when oppressive. (Repealed.)
§ 3394. Agreement to sell property by one who has no title.
§ 3395. Relief against parties claiming under person bound to perform

§ 3384. Specific performance. Except as otherwise provided in this article, specific performance of an obligation may be compelled. En. March 21, 1872. Am'd. 1873-4, 266.

Cal. Rep. Cit. 110, 641; 110, 642; 135, 260.

See post, secs. 3390 and 3392.

Specifically enforcing revised contract: See post, sec. 3402.

§ 3385. Remedy mutual. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

Cal. Rep. Cit. 110, 642.

§ 3386. No remedy unless mutual. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance. En. March 21, 1872.

Cal. Rep. Cit. 91, 90; 110, 642; 142, 346; 144, 533; 147, 303.

Performance by parties seeking execution: Compare with post, sec. 3392.

§ 3387. Distinction between real and personal property. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved. En. March 21, 1872.

Cal. Rep. Cit. 123, 6; 123, 9; 123, 11; 135, 261; 135, 262.

§ 3388. Contract signed by one party only may be enforced by other. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance. En. March 21, 1872.

Cal. Rep. Cit. 146, 288.

§ 3389. Liquidation of damages not a bar to specific performance. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same. En. March 21, 1872.

Cal. Rep. Cit. 123, 6; 123, 9; 123, 11; 135, 261.

§ 3390. What cannot be specifically enforced. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable. En. March 21, 1872.

Cal. Rep. Cit. 88, 249; 130, 530; 136, 611. Subd. 1—119, 38; 130, 529; 140, 497. Subd. 5—122, 348. Subd. 6—121, 398.

§ 3391. What parties cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced. En. March 21, 1872.

Cal. Rep. Cit. 74, 563; 77, 115; 77, 116; 124, 494; 129, 287. Subd. 1—123, 451; 128, 128; 129, 287; 135, 261. Subd. 2—128, 128; 134, 171; 135, 263; 142, 467; 144, 535.

§ 3392. What parties cannot have specific performance in their favor. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated, in which case specific perform-

ance may be compelled, upon full compensation being made for the default. En. March 21, 1872.

§ 3393. Specific performance not required when oppressive. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

§ 3394. Agreement to sell property by one who has no title. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt. En. March 21, 1872.

§ 3395. Relief against parties claiming under person bound to perform. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or encumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation. En. March 21, 1872.

Cal. Rep. Cit. 122, 664; 136, 143.

ARTICLE IV.

REVISION OF CONTRACTS.

§ 3399. When contract may be revised.
§ 3400. Presumption as to intent of parties.
§ 3401. Principles of revision.
§ 3402. Enforcement of revised contract.

§ 3399. When contract may be revised. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value. En. March 21, 1872.

Cal. Rep. Cit. 65, 281; 68, 616; 83, 158; 85, 502; 86, 340; 88, 209; 88, 212; 88, 213; 112, 352; 120, 69; 123, 330; 132, 584; 137, 75; 137, 93; 137, 458; 138, 115; 144, 454.

Revised to express intention: Post, sec. 3401.

§ 3400. Presumption as to intent of parties. For the purpose of revising a contract, it must be presumed that

all the parties thereto intended to make an equitable and conscientious agreement. En. March 21, 1872.

Cal. Rep. Cit. 132, 584.

§ 3401. **Principles of revision.** In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be. En. March 21, 1872.

Cal. Rep. Cit. 85, 501; 132, 584.

§ 3402. **Enforcement of revised contract.** A contract may be first revised and then specifically enforced. En. March 21, 1872.

Cal. Rep. Cit. 132, 584; 137, 75; 137, 458.

ARTICLE V.

RESCISSION OF CONTRACTS.

§ 3406. When rescission may be adjudged.
§ 3407. Rescission for mistake.
§ 3408. Court may require party rescinding to do equity.

§ 3406. **When rescission may be adjudged.** The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section 1689; or,

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

3. When the public interest will be prejudiced by permitting it to stand. En. March 21, 1872.

Cal. Rep. Cit. 86, 251; 98, 499; 98, 502; 120, 511; 141, 63; 147, 743. Subd. 1—133, 443; 138, 672.

Rescission of contracts by party thereto: Ante, sec. 1689.

Rescission against consent, how affected: Ante, sec. 1691.

Cancellation of instruments: See post, secs. 3412 et seq.

Rescission, how effected: See ante, sec. 1691.

§ 3407. Rescission for mistake. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same

position as if the contract had not been made. En. March 21, 1872.

Cal. Rep. Cit. 94, 58; 98, 499; 109, 426; 114, 168; 120, 511; 124, 268; 146, 390.

Placing party in statu quo: Ante, sec. 1691.

§ 3408. **Court may require party rescinding to do equity.** On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require. En. March 21, 1872.

Cal. Rep. Cit. 94, 58; 98, 499; 98, 502; 120, 511; 123, 378; 146, 390; 147, 744.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

§ 3412. When cancellation may be ordered.
§ 3413. Instrument obviously void.
§ 3414. Cancellation in part.

§ 3412. **When cancellation may be ordered.** A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled. En. March 21, 1872.

Cal. Rep. Cit. 59, 197; 79, 445; 83, 238; 102, 631; 126, 474; 132, 697.

Rescission of contracts: See ante, secs. 1688 et seq., 3406 et seq.

Removing cloud on title: See sec. 738, Code Civ. Proc.

Cancellation and alteration of instruments by parties thereto: See ante, secs. 1697 et seq.

§ 3413. **Instrument obviously void.** An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 79, 445.

§ 3414. **Cancellation in part.** Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 86, 251.

C. C., 1906, new p. 428 §3415 Enact. p. 429

§ 3415. An action may be maintained by any person interested in any private document or instrument in writing, which has been lost, destroyed or damaged by conflagration or other public calamity, to prove, establish, compel the re-issuance, re-execution, and re-acknowledgment of such document or instrument. If such document or instrument be a negotiable instrument, the court must compel the person in whose favor it is drawn to give a bond executed by himself and two sufficient sureties to indemnify the person re-issuing, re-executing, or re-acknowledging the same against any lawful claim thereon. [In effect June 18, 1906.]

are regulated by the Code of Civil Procedure. En. March 21, 1872.

Provisional injunctions: See Code Civ. Proc., secs. 525-533.

§ 3422. Injunction, when allowed. Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust. En. March 21, 1872.

Cal. Rep. Cit. 64, 473; 113, 276; 117, 381. Subd. 3—117, 380.

§ 3423. Injunction, when not allowed. An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

position as if the contract had not been made. En. March

[illegible] cancellation in part.

§ 3412. **When cancellation may be ordered.** A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled. En. March 21, 1872.

Cal. Rep. Cit. 59, 197; 79, 445; 83, 238; 102, 631; 126, 474; 132, 697.

Rescission of contracts: See ante, secs. 1688 et seq., 3406 et seq.

Removing cloud on title: See sec. 738, Code Civ. Proc.

Cancellation and alteration of instruments by parties thereto: See ante, secs. 1697 et seq.

§ 3413. **Instrument obviously void.** An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 79, 445.

§ 3414. **Cancellation in part.** Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue. En. March 21, 1872.

Cal. Rep. Cit. 55, 566; 86, 251.

CHAPTER III.

PREVENTIVE RELIEF.

§ 3420. Preventive relief, how granted.
§ 3421. Provisional injunctions.
§ 3422. Injunction, when allowed.
§ 3423. Injunction, when not allowed.

§ 3420. Preventive relief, how granted. Preventive relief is granted by injunction, provisional or final. En. March 21, 1872.

Proceedings in other courts: Post, sec. 3423.

Mortgage.—Injunction to restrain party in possession from waste during foreclosure suit: Code Civ. Proc., sec. 745.

Enjoining nuisance: See Code Civ. Proc., sec. 731.

§ 3421. Provisional injunctions. Provisional injunctions are regulated by the Code of Civil Procedure. En. March 21, 1872.

Provisional injunctions: See Code Civ. Proc., secs. 525-533.

§ 3422. Injunction, when allowed. Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust. En. March 21, 1872.

Cal. Rep. Cit. 64, 473; 113, 276; 117, 381. Subd. 3—117, 380.

§ 3423. Injunction, when not allowed. An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States.

3. To stay proceedings in another state upon a judgment of a court of that state.

4. To prevent the execution of a public statute by officers of the law, for the public benefit.

5. To prevent the breach of a contract, the performance of which would not be specifically enforced.

6. To prevent the exercise of a public or private office, in a lawful manner by the person in possession.

7. To prevent a legislative act by a municipal corporation. En. March 21, 1872. Am'd. 1873-4, 267.

Cal. Rep. Cit. 79, 548; 117, 379. Subd. 1—117, 378. Subd. 2—117, 378; 139, 474; 139, 475; 139, 476; 139, 478; 147, 24; 147, 28. Subd. 3—117, 378. Subd. 4—75, 181.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

Title I. General Principles, §§ 3429-3433.
II. Fraudulent Instruments and Transfers, §§ 3439-3442.
III. Assignments for the Benefit of Creditors, §§ 3449-3473.

TITLE I.

GENERAL PRINCIPLES.

§ 3429. Who is a debtor.
§ 3430. Who is a creditor.
§ 3431. Contracts of debtor are valid.
§ 3432. Payments in preference.
§ 3433. Relative rights of different creditors.

§ 3429. Who is a debtor. A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent. En. March 21, 1872.

Cal. Rep. Cit. 68, 12; 112, 490; 112, 25; 132, 465.

§ 3430. Who is a creditor. A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money. En. March 21, 1872.

Cal. Rep. Cit. 112, 490; 121, 25; 132, 465.

§ 3431. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract. En. March 21, 1872.

Cal. Rep. Cit. 127, 312; 135, 158.

§ 3432. Payments in preference. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another. En. March 21, 1872.

Cal. Rep. Cit. 82, 135; 83, 309; 100, 631; 104, 266; 108, 85; 127, 84; 127, 137; 128, 660; 135, 158; 139, 366; 140, 399.
Preferring creditor: Post, sec. 3457, subd. 1.

§ 3433. Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons. En. March 21, 1872.

Cal. Rep. Cit. 113, 466; 114, 541; 119, 296; 127, 84; 139, 352; 139, 361; 141, 12.

Marshaling of assets: See ante, sec. 2899.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

§ 3439. Transfers, etc., with intent to defraud creditors.
§ 3440. Certain transfers presumed fraudulent.
§ 3441. Creditor's right must be judicially ascertained.
§ 3442. Question of fraud, how determined.

§ 3439. Transfers, etc., with intent to defraud creditors. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to defray or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. En. March 21, 1872.

Cal. Rep. Cit. 69, 250; 75, 187; 83, 237; 83, 238; 84, 245; 84, 249; 84, 508; 88, 397; 89, 288; 89, 289; 94, 188; 114, 454; 114, 456; 114, 457; 114, 458; 114, 535; 114, 536; 115, 273; 117, 148; 128, 108; 131, 627; 135, 125; 135, 160; 138, 250.

Arrest: See Code Civ. Proc., sec. 479.

Fraudulent conveyance: See Pen. Code, secs. 154, 531.

§ 3440. Certain transfers presumed fraudulent. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry and respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things

transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or encumbrancers in good faith subsequent to the transfer; provided, however, that the provisions of this section shall not apply to the transfers of wines in the wineries or wine cellars of the makers or owners thereof, or other persons having possession, care, and control of the same, and the pipes, casks, and tanks in which the said wines are contained, which transfers shall be made in writing, and certified and verified in the same form as provided for chattel mortgages and which shall be recorded in the book of miscellaneous records in the office of the county recorder of the county in which the same are situated; provided, also, that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be substantially a whole) in bulk, or in any manner otherwise than in the ordinary course of trade and in the regular and usual practice and method of business of the vendor, transferrer, or assignor, will be conclusively presumed to be fraudulent and void as against the existing creditors of the vendor, transferrer, or assignor, unless at least five days before the consummation of such sale, transfer, or assignment the vendor, transferrer, or assignor, or the intended vendee, transferee, or assignee shall record in the office of the county recorder in the county or counties in which the said stock in trade is situated, a notice of said intended sale, transfer, or assignment, stating the name and address of the intended vendor, transferrer, or assignor, and the name and address of the intended vendee, transferee or assignee, and a general statement of the character of the property or merchandise intended to be sold, assigned, or transferred, and the date when, and the place where, the purchase price, if any there be, is to be paid; provided, nevertheless, that if such intended sale is to be at public auction the notice above required to be recorded shall state that fact, the time, terms, and place of said sale, the names and addresses of the vendor and auctioneer, and a general statement of the character of the property or merchandise intended to be sold; but such sale shall in no event occur within five days of the date of recordation of said notice; provided further, that the provisions of this section shall not apply or extend to any sale, transfer or assignment made under the direction or order of a court of competent jurisdiction, or by any ex-

ecutor, administrator, guardian, receiver, or other officer or person acting in the regular and proper discharge of official duty, or in the discharge of any trust imposed upon him by law, nor to any transfer or assignment made for the benefit of creditors generally, nor to any sale, transfer or assignment of any property exempt from execution. En. March 21, 1872. Am'd. 1895, 47; 1903, 111.

Cal. Rep. Cit. 53, 402; 53, 625; 54, 629; 56, 333; 56, 334; 63, 4; 63, 245; 63, 496; 64, 79; 67, 284; 69, 249; 70, 563; 73, 212; 73, 323; 73, 401; 74, 379; 76, 168; 76, 307; 76, 459; 76, 540; 77, 244; 77, 546; 78, 116; 81, 96; 81, 97; 84, 170; 84, 171; 84, 245; 84, 249; 84, 557; 89, 289; 89, 296; 89, 303; 89, 503; 91, 295; 92, 79; 94, 187; 94, 525; 95, 265; 95, 267; 98, 459; 99, 343; 101, 240; 102, 550; 102, 552; 107, 75; 107, 76; 107, 147; 107, 148; 109, 158; 109, 201; 109, 202; 112, 13; 114, 293; 114, 527; 114, 529; 114, 535; 114, 536; 115, 325; 115, 326; 116, 677; 117, 40; 117, 47; 117, 146; 119, 82; 121, 242; 122, 470; 122, 550; 123, 315; 124, 202; 124, 203; 124, 204; 125, 187; 125, 188; 126, 558; 126, 559; 127, 231; 127, 296; 127, 297; 127, 298; 127, 303; 127, 308; 127, 311; 127, 312; 128, 37; 128, 326; 143, 283.

Chattel mortgage.—Change of possession not necessary; it must be recorded: Ante, sec. 2959.

Chattel mortgage, when void as to creditors and purchasers: Ante, sec. 2957.

Bond by grantee on suit to set aside fraudulent conveyance: See Code Civ. Proc., secs. 676-680½.

§ 3441. Creditor's right must be judicially ascertained. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation. En. March 21, 1872.

Cal. Rep. Cit. 93, 286; 95, 532; 132, 613.

§ 3442. Question of fraud, how determined. In all cases arising under section twelve hundred and twenty-seven, or under the provisions of this title, except as otherwise provided in section thirty-four hundred and forty, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; provided, however, that any transfer or encumbrance of property made or given voluntarily, or without a valuable consideration, by a party while insolvent or in

contemplation of insolvency, shall be fraudulent, and void as to existing creditors. En. March 21, 1872. Am'd. 1895, 154.

Cal. Rep. Cit. 54, 629; 65, 344; 74, 543; 83, 371; 84, 508; 89, 289; 89, 293; 89, 296; 92, 622; 93, 286; 104, 223; 109, 671; 117, 146; 117, 148; 117, 150; 118, 434; 122, 117; 122, 658; 126, 638; 126, 639; 126, 652; 140, 619; 140, 620; 140, 623; 141, 627; 144, 711; 145, 226.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

§ 3449. When debtor may execute assignment.
§ 3450. Insolvency, what.
§ 3451. Certain transfers not affected.
§ 3452. What debts may be secured.
§ 3453. What preferences may be given. (Repealed.)
§ 3454. Preference must be absolute. (Repealed.)
§ 3455. Certain rights not affected by preferences in assignment. (Repealed.)
§ 3456. Joint and separate debts. (Repealed.)
§ 3457. Assignment, when void.
§ 3458. Assignment to be in writing.
§ 3459. Compliance with provisions of last section necessary to validity of assignment.
§ 3460. Assignee takes, subject to rights of third parties.
§ 3461. Inventory required.
§ 3462. Affidavit of assignor to be filed with inventory.
§ 3463. Recording assignment and filing inventory.
§ 3464. Same.
§ 3465. Effect of omitting to record.
§ 3466. Assignment of real property.
§ 3467. Bond of assignees.
§ 3468. Conditions of disposal and conversion.
§ 3469. Accounting of assignee.
§ 3470. Property exempt.
§ 3471. Commissions of assignee.
§ 3472. Assignees protected for acts done in good faith.
§ 3473. Assent of creditor necessary to modification of assignment.

§ 3449. When debtor may execute assignment. An insolvent debtor may in good faith execute an assignment of property in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this code relative to trusts and fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons. Every such assignment shall contain a list of the names of the creditors of the assignor, and their places of residence and

amounts of their respective demands, and the amounts and nature of any security therefor, and shall, subject to the other provisions of this section, be made to the sheriff of the county, or city and county, wherein the assignor resides, if the assignor resides within this state; or in case the assignor resides out of this state, then to the sheriff of the county, or city and county, wherein the property assigned, or some of it, is situated; but when the assignor resides out of the state, an assignment made as herein provided may, by its terms, transfer any property of the assignor in this state. The sheriff shall forthwith take possession of all the property so assigned to him, and keep the same till delivered by him, as hereinafter provided. When the assignment has been made, as herein provided, the sheriff shall immediately, by mail, notify the creditors named in the assignment, at their places of residence as given therein, to meet at his office on a day and hour to be appointed by him, of not less than eight, nor more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the said sheriff in the premises, and shall also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper published in his county, or city and county. The notice so to be mailed shall also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with said sheriff, at or before such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting as hereinafter provided, be accepted by said sheriff as correct; and when no such statement is filed, the statement of amount as set forth in the assignment shall be accepted by the sheriff as correct. No creditor having a mortgage or pledge of real or personal property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors, unless he shall have first conveyed, released, or delivered up his said security to said sheriff, for the benefit of all creditors of said assignor. At such meeting the sheriff shall preside, and a majority in amount of demands present or represented by proxy shall control all questions and decisions. The creditors may adjourn such meeting from time to time, and may vote on all questions either in person or by proxy signed and

acknowledged before any officer authorized to take acknowledgments, and filed with the sheriff. At such a meeting, or any adjournment thereof, the creditors may elect one or more assignees from their own number, in the place and stead of the sheriff, and the person or persons so elected shall afterwards be the assignee or assignees under the provisions of this title; and the sheriff, by transfer in writing, acknowledged as required by section three thousand four hundred and fifty-eight, shall at once assign to such elected assignee or assignees, upon the trusts in this title provided, all the property so assigned to him, and delivered possession thereof. All recitals in such assignment by said sheriff of notices of such meeting, and the holding thereof, and of the due election of such assignee or assignees, shall be prima facie proof of the facts recited. The sheriff shall, before the delivery of such assignment, be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment. Thereupon, and after the record of such last-named assignment, as in this title provided, such elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, upon the trusts and conditions and for the purposes in this title provided. En. March 21, 1872. Am'd. 1889, 80; 1895, 83.

Cal. Rep. Cit. 63, 188; 78, 265; 83, 237; 87, 456; 94, 188; 98, 411; 104, 399; 108, 86; 108, 87; 112, 495; 113, 431; 124, 161; 124, 163; 128, 107; 139, 367; 144, 513; 144, 516.

Partner cannot assign: See ante, sec. 2430, subd. 1.

§ 3450. Insolvency, what. A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means as they become due. En. March 21, 1872.

Cal. Rep. Cit. 74, 543; 78, 576; 84, 48; 117, 155.

§ 3451. Certain transfers not affected. The provisions of this title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this state, a transfer of property situated within it; but such person cannot make a general assignment of property situated in this state for the satisfaction of all his creditors, except as in this title provided; nor do the provisions of this title affect the power of a person, although insolvent, and whether residing within or without this state, to transfer property in

this state, in good faith to a particular creditor, or creditors, or to some other person or persons in trust for such particular creditor or creditors for the purpose of paying or securing the whole or part of a debt owing to such creditor or creditors, whether in his or their own right or otherwise. En. March 21, 1872. Am'd. 1889, 82; 1905, 622

The change consists in the insertion of the words "or creditors or to some other person or persons in trust for such particular creditor or creditors," after "creditor." The rule stated in the section as amended by the addition of the clause above quoted is the rule heretofore enforced in this state (Lawrence v. Neff, 41 Cal. 566; Hendley v. Pfister, 39 Cal. 283; Priest v. Brown, 100 Cal. 626); but some doubt has been cast upon the subject by the later case of Sabachi v. Chase, 108 Cal. 81.—Code Commissioner's Note.

Cal. Rep. Cit. 83, 309; 126, 50; 139, 366.

§ 3452. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent. En. March 21, 1872.

Cal. Rep. Cit. 128, 107.

§ 3453. What preferences may be given. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

§ 3454. Preference must be absolute. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

§ 3455. Certain rights not affected by preferences in assignment. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

§ 3456. Joint and separate debts. (Repealed.) En. March 21, 1872. Rep. 1873-4, 267.

§ 3457. Assignment, when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it give a preference of one debt or class of debts over another.

2. If it tend to coerce any creditor to release or compromise his demand.

3. If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim that is known to be justly due from the assignor.

4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit before all his existing debts are paid.

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

6. If it exempt him from liability for neglect of duty or misconduct. En. March 21, 1872. Am'd. 1873-4, 267.

Cal. Rep. Cit. 85, 135; 87, 457; 108, 85; 108, 87; 113, 431. Subd. 4—87, 456; 131, 627. Subd. 5—98, 414.

Preferences: See ante, sec. 3432. Preferences by special partnership: Ante, sec. 2496.

§ 3458. Assignment to be in writing. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized in writing, and the transfer by the sheriff must also be in writing, subscribed by the sheriff in his official capacity. Both such assignment and such transfer must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and be recorded as required by sections thirty-four hundred and sixty-three and thirty-four hundred and sixty-four; but recording in one county constitutes a compliance with the following section. En. March 21, 1872. Am'd. 1889, 82.

Cal. Rep. Cit. 98, 411; 104, 399; 144, 515.

§ 3459. Compliance with provisions of last section necessary to validity of assignment. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto. En. March 21, 1872.

Cal. Rep. Cit. 98, 411; 144, 515.

§ 3460. Assignee takes, subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment. En. March 21, 1872.

Cal. Rep. Cit. 128, 106.

§ 3461. Inventory required. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 3463, a full and true inventory, showing:

1. All the creditors of the assignor;

2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated;

3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

4. The true consideration of the liability in each case, and the place where it arose;

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,

7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor. En. March 21, 1872.

Cal. Rep. Cit. 78, 267; 80, 543; 82, 610; 85, 135; 87, 460; 98, 412. Subd. 7—85, 136.

§ 3462. Affidavit of assignor to be filed with inventory. An affidavit must be made by every assignor executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true according to the best of such assignor's knowledge and belief. If the assignor neglects and refuses to make and file such inventory and affidavit within said twenty days, the assignment shall not, for that reason, be affected in any way, but in that event the assignee or assignees elected by the creditors shall within twenty days thereafter make and file, in the office of the county recorder where the assignment is first recorded, a verified inventory of all assets received by them; and such assignee or assignees may at any time, or from time to time, after the transfer to them by the sheriff, by petition to the superior court of the county, or city and county, where the assignment is first recorded, cause the assignor, by order or citation, to appear before said court, or a commissioner or referee to be appointed by it, at a time and place within the county, or city and county, to be designated in the order or citation, to be examined touching the matters mentioned in section three thousand four hundred and sixty-one, and any other matters relative to the assignment, and to have with him all books of account vouchers, and papers relating to the assigned property; and

such court may by its order require the surrender to such assignee or assignees of such books, vouchers, and papers, to be by them retained until their trust is fully completed and performed. En. March 21, 1872. Am'd. 1889, 82.

Cal. Rep. Cit. 82, 610; 87, 455; 87, 459.

§ 3463. **Recording assignment and filing inventory.** An assignment for the benefit of creditors must be recorded, and the inventory required by section 3461 filed with the county recorder of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this state, with the recorder of the county in which his principal place of business was then situated; or if he had not then a residence or place of business in this state, with the recorder of the county in which the principal part of the assigned property was then situated. En. March 21, 1872.

Cal. Rep. Cit. 87, 460; 98, 411; 104, 399.

§ 3464. **Same.** If an assignment for the benefit of creditors is executed by more than one assignor, it may be recorded, and a copy of the inventory, required by section 3461, may be filed with the recorder of the county in which any of the assignors resided at its date, or in which any of them, not then residing in the state, had then a place of business. En. March 21, 1872.

Cal. Rep. Cit. 98, 411; 104, 399.

§ 3465. **Effect of omitting to record.** An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers, and incumbrancers in good faith, and for value, unless it is recorded as provided in this title, and unless either the inventory required by section 3461, or the inventory required of the assignee or assignees by section 3462, is filed in the manner provided in this title and within the time designated. En. March 21, 1872. Am'd. 1877-8, 90; 1889, 83.

Cal. Rep. Cit. 85, 135; 87, 460; 98, 412.

§ 3466. **Assignment of real property.** Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article IV of the chapter on Recording Transfers, as well as to those of this title. En. March 21, 1872.

Cal. Rep. Cit. 98, 412; 104, 398.

Recording trusfers: Ante, secs. 1158-1217.

§ 3467. Bond of assignees. No bond shall be given by the sheriff, but he shall be liable on his official bond for the care and custody of the property while in his possession. Within forty days after date of the transfer by the sheriff, the assignee must enter into a bond to the people of this state in such amount as may be fixed by a judge of the superior court of the county, or city and county, in which an inventory in accordance with the provisions of this title is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to comply with the provisions of this section may be removed by the above-named superior court on petition of the assignor or any creditor, and his successor appointed by such court. En. March 21, 1872. Am'd. 1883, 2; 1889, 83.

Cal. Rep. Cit. 80, 543; 98, 410; 98, 411; 98, 414; 104, 398.

§ 3468. Conditions of disposal and conversion. Until a verified inventory has been made and filed, either by the assignor or assignee, as required by the provisions of this title, and the assignee has given the bond required by the last section, such assignee has no authority to dispose of the property of the estate, or any part of it (except in the case of perishable property, which in his discretion he may dispose of at any time, and receive the proceeds of sale thereof; nor has he power to convert the property, or the proceeds of any sale of perishable property, to the purposes of the trust. Within ten days after the filing of his bond, the assignee must commence the publication (and such publication shall continue at least once a week for four weeks), in some newspaper published in the county, or city and county, where the inventory is filed, of a notice to creditors of the assignor, stating the fact and date of the assignment, and requiring all persons having claims against the assignor to exhibit them, with the necessary vouchers, and verified by the oath of the creditor, to the assignee, at his place of residence or business, to be specified in the notice; and he shall also, within ten days after the first publication of said notice, mail a copy of such notice of each creditor whose name is given in the instrument of assignment, at the address therein given. After such notice is given, a copy thereof, with

affidavit of due publication and mailing, must be filed with the county recorder with whom the inventory has been filed, which affidavit shall be prima facie evidence of the facts stated therein. At any time, or from time to time, after the expiration of thirty days from the first publication of said notice (provided, the same shall also have been mailed as in this section provided), the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claim shall be entitled to a dividend equal to the per cent already declared and paid, before any further dividend is made; provided, however, that there be assets sufficient for that purpose; and provided, that the failure to present such claim shall not have resulted from his own neglect, and he shall attach to such claim a statement, under oath, showing fully why the same was not before presented. When a creditor has a mortgage or pledge of real or personal property of the debtor, or a lien thereon, for executing the payment of a debt owing to him from the debtor, and shall not have conveyed, released, or delivered up such security to the sheriff, as provided for by section three thousand four hundred and forty-nine of this code, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the superior court of the county in which the assignment is made shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor shall not be allowed to prove any part of his debt. En. March 21, 1872. Am'd. 1889, 83; 1895, 84.

Cal. Rep. Clt. 80, 543; 144, 517.

§ 3469. Accounting of assignee. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor to account before the superior court of the county where the accompanying inventory was filed, in the manner prescribed by the insolvent laws of this state. En. March 21, 1872. Am'd. 1883, 3.

§ 3470. Property exempt. Property exempt from execution and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby. En. March 21, 1872.

§ 3471. Commissions of assignee. The elected assignee or assignees for the benefit of creditors shall be entitled to the same commissions on assignments heretofore and hereafter made as are allowed by law to the assignees in insolvency, and the assignment cannot grant more. Such assignee or assignees shall also be entitled to all necessary expenses in the management of their trust. En. March 21, 1872. Am'd. 1889, 84.

Cal. Rep. Cit. 56, 628.

§ 3472. Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust merely for the reason that the assignment is awterward adjudged void. En. March 21, 1872.

§ 3473. Assent of creditor necessary to modification of assignment. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the sheriff, or a transfer by the sheriff to the elected assignee or assignees which has been executed and recorded, cannot afterwards be modified or canceled by the parties without the consent of the assignor and of every creditor affected thereby. En. March 21, 1872. Am'd. 1889, 84.

Cal. Rep. Cit. 78, 265; 98, 411; 98, 412; 108, 86; 108, 87; 139, 867.

PART III.

NUISANCE.

Title I. General Principles, §§ 3479-3484.
II. Public Nuisances, §§ 3490-3495.
III. Private Nuisances, §§ 3501-3503.

TITLE I.

GENERAL PRINCIPLES.

§ 3479. Nuisance, what.
§ 3480. Public nuisance.
§ 3481. Private nuisance.
§ 3482. What is not deemed a nuisance.
§ 3483. Successive owners.
§ 3484. Abatement does not preclude action.

§ 3479. Nuisance, what. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway is a nuisance. En. March 21, 1872. Am'd. 1873-4, 268.

Cal. Rep. Cit. 65, 455; 66, 147; 66, 151; 67, 546; 76, 160; 79, 348; 87, 93; 111, 30; 116, 399; 126, 673; 131, 502; 136, 16; 144, 136.

Nuisances, what are, and remedies for: See Code Civ. Proc., sec. 731; Pen. Code, secs. 370-371.

Artesian well not capped so as to prevent waste is: See act of 1877-8, 195, in Penal Code Appendix, title Artesian Wells.

§ 3480. Public nuisance. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. En. March 21, 1872. Am'd. 1873-4, 268.

Cal. Rep. Cit. 66, 147; 109, 343; 111, 30; 116, 399; 126, 673.

Abating public nuisance: Secs. 3494, 3495.
Public nuisance not legalized by lapse of time: Sec. 3490.
Act authorizing district attorney to abate public nuisance passed March 15, 1899: Stats. 1899, p. 103.

§ 3481. Private nuisance. Every nuisance not included in the definition of the last section is private. En. March 21, 1872.

§ 3482. What is not deemed a nuisance. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. En. March 21, 1872.

Cal. Rep. Cit. 91, 255.

§ 3483. Successive owners. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it. En. March 21, 1872.

Cal. Rep. Cit. 72, 182.
Nuisances, what are, and actions for: See Code Civ. Proc., sec. 731.

§ 3484. Abatement does not preclude action. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. En. March 21, 1872.
Nuisance: Pen. Code, secs. 370-374.

TITLE II.

PUBLIC NUISANCES.

§ 3490. Lapse of time does not legalize.
§ 3491. Remedies against public nuisance.
§ 3492. Remedy regulated, how.
§ 3493. Remedies for public nuisance.
§ 3494. How abated.
§ 3495. Same.

§ 3490. Lapse of time does not legalize. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. En. March 21, 1872.

Cal. Rep. Cit. 66, 152; 103, 238; 128, 235.
Public nuisance defined: See sec. 3480.

§ 3491. Remedies against public nuisance. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement. En. March 21, 1872. Am'd. 1880, 1.

Liability for maintaining or permitting a public nuisance: See Pen. Code, sec. 373a.

Power of board of health to abate in San Francisco: See Pol. Code, sec. 3028.

§ 3492. Remedy regulated, how. The remedy by indictment or information is regulated by the Penal Code. En. March 21, 1872. Am'd. 1880, 1.

Punishment for nuisance: Pen. Code, secs. 370-374.

§ 3493. Remedies for public nuisance. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise. En. March 21, 1872.

Cal. Rep. Cit. 54, 533; 87, 176; 89, 29; 103, 238; 107, 205; 109, 343; 121, 513; 136, 15; 141, 363; 144, 139.

§ 3494. How abated. A public nuisance may be abated by any public body or officer authorized thereto by law. En. March 21, 1872.

Act of March 15, 1899, Stats. 1899, p. 103, authorized the district attorney to abate public nuisances.

§ 3495. Same. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. En. March 21, 1872.

TITLE III.

PRIVATE NUISANCES.

§ 3501. Remedies for private nuisance.
§ 3502. Abatement, when allowed.
§ 3503. When notice is required.

§ 3501. Remedies for private nuisance. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement. En. March 21, 1872.

Civil action for nuisance: See, generally, ante, sec. 3493.

§ 3502. **Abatement, when allowed.** A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury. En. March 21, 1872.

Cal. Rep. Cit. 126, 417.

Abating public nuisance: See ante, secs. 3494, 3495; act of March 15, 1899, Stats. 1899, p. 103.

§ 3503. **When notice is required.** Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate. En. March 21, 1872.

PART IV.

MAXIMS OF JURISPRUDENCE.

§ 3509. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application. En. March 21, 1872.

Cal. Rep. Cit. 88, 527; 123, 530.

§ 3510. When the reason of a rule ceases, so should the rule itself. En. March 21, 1872.

Cal. Rep. Cit. 88, 527; 141, 123.

§ 3511. Where the reason is the same, the rule should be the same. En. March 21, 1872.

§ 3512. One must not change his purpose to the injury of another. En. March 21, 1872.

§ 3513. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement. En. March 21, 1872.

Cal. Rep. Cit. 58, 98; 95, 368; 99, 177; 108, 659; 113, 336; 129, 259; 135, 119; 144, 655.

§ 3514. One must so use his own rights as not to infringe upon the rights of another. En. March 21, 1872.

Cal. Rep. Cit. 66, 151; 86, 382.

§ 3515. He who consents to an act is not wronged by it. En. March 21, 1872.

Cal. Rep. Cit. 70, 468; 95, 544; 99, 235; 106, 151; 143, 504.

§ 3516. Acquiescence in error takes away the right of objecting to it. En. March 21, 1872.

Cal. Rep. Cit. 106, 151.

§ 3517. No one can take advantage of his own wrong. En. March 21, 1872.

Cal. Rep. Cit. 82, 83; 125, 471.

§ 3518. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession. En. March 21, 1872.

§ 3519. He who can and does not forbid that which is done on his behalf is deemed to have bidden it. En. March 21, 1872.

Cal. Rep. Cit. 143, 504; 145, 594.

§ 3520. No one should suffer by the act of another. En. March 21, 1872.

§ 3521. He who takes the benefit must bear the burden. En. March 21, 1872.

Cal. Rep. Cit. 106, 151; 138, 622; 141, 227.

§ 3522. One who grants a thing is presumed to grant also whatever is essential to its use. En. March 21, 1872.

Cal. Rep. Cit. 116, 591; 142, 516; 145, 473.

§ 3523. For every wrong there is a remedy. En. March 21, 1872.

Cal. Rep. Cit. 117, 202.

§ 3524. Between those who are equally in the right, or equally in the wrong the law does not interpose. En. March 21, 1872.

Cal. Rep. Cit. 109, 583.

§ 3525. Between rights otherwise equal the earliest is preferred. En. March 21, 1872.

Cal. Rep. Cit. 54, 143.

§ 3526. No man is responsible for that which no man can control. En. March 21, 1872.

§ 3527. The law helps the vigilant, before those who sleep on their rights. En. March 21, 1872.

§ 3528. The law respects form less than substance. En. March 21, 1872.

Cal. Rep. Cit. 58, 98; 89, 41; 95, 368; 129, 246; 135, 615; 136, 419.

§ 3529. That which ought to have been done is to be regarded as done, in favor of him to whom and against him from whom, performance is due. En. March 21, 1872.

Cal. Rep. Cit. 87, 256; 99, 69; 102, 91; 136, 419.

§ 3530. That which does not appear to exist is to be regarded as if it did not exist. En. March 21, 1872.

Cal. Rep. Cit. 123, 439.

§ 3531. The law never requires impossibilities. En. March 21, 1872.

§ 3532. The law neither does nor requires idle acts. En. March 21, 1872.

Cal. Rep. Cit. 58, 98; 83, 263; 95, 368; 96, 213; 130, 393; 144, 669; 147, 745.

§ 3533. The law disregards trifles. En. March 21, 1872.

Cal. Rep. Cit. 70, 521.

§ 3534. Particular expressions qualify those which are general. En. March 21, 1872.

Cal. Rep. Cit. 123, 530.

§ 3535. Contemporaneous exposition is in general the best. En. March 21, 1872.

Cal. Rep. Cit. 79, 485; 118, 484.

§ 3536. The greater contains the less. En. March 21, 1872.

Cal. Rep. Cit. 146, 256.

§ 3537. Superfluity does not vitiate. En. March 21, 1872.

§ 3538. That is certain which can be made certain. En. March 21, 1872.

Cal. Rep. Cit. 82, 500; 130, 95; 146, 368.

§ 3539. Time does not confirm a void act. En. March 21, 1872.

§ 3540. The incident follows the principal, and not the principal the incident. En. March 21, 1872.

Cal. Rep. Cit. 110, 167; 142, 517; 146, 689.

§ 3541. An interpretation which gives effect is preferred to one which makes void. En. March 21, 1872.

Cal. Rep. Cit. 123, 143; 129, 226; 136, 104; 141, 102.

§ 3542. Interpretation must be reasonable. En. March 21, 1872.

Cal. Rep. Cit. 129, 226; 130, 94.

§ 3543. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer. En. March 21, 1872.

Cal. Rep. Cit. 54, 143; 93, 356; 100, 621; 101, 411; 102, 105; 122, 623; 143, 504.

Approved, March 21, 1872.

NEWTON BOOTH,
Governor.

The amendments which took effect July 1, 1874, and are so marked at the end of each section, were passed by act of March 30, 1874, the closing paragraph of which is as follows:—

"All provisions of law inconsistent with the provisions of this act are hereby repealed, but no rights acquired or proceedings taken under the provisions repealed shall be impaired or in any manner affected by this repeal; and whenever a limitation or period of time is prescribed by such repeal provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this act takes effect, and the same or any other limitation, is prescribed by this act, the time of limitation which shall have run when this act takes effect shall be deemed part of the time prescribed by this act.

"With relation to the laws passed at the present session of the legislature, this act must be construed as though it had been passed at the first day of the present session. if the provisions of any law passed at the present session of the legislature contravenes or is inconsistent with the provisions of this act, the provisions of such law must prevail.

"This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

"Approved, March 30, 1874."

APPENDIX.

ACKNOWLEDGMENTS.

An act to legalize certain acknowledgments.

[Approved March 2, 1891; Stats. 1891, 20. Superseded by Stats. 1897, p. 29, ch. XXXII to the same effect.]

See sec. 1207, ante, curing defective acknowledgments executed before January 1, 1903.

An act to legalize acknowledgments of certificates in writing required by section two of an act entitled "An act to provide for the formation of chambers of commerce, boards of trade, mechanic institutes, and other kindred protective associations," approved March thirty-first, eighteen hundred and sixty-six, heretofore made or taken, and to legalize all certificates heretofore made, signed, and acknowledged, and filed under section two of said act.

[Approved March 10, 1885; 1885, 55.]

Section 1. All acknowledgments heretofore made or taken to the certificate in writing required by section two of an act entitled "An act to provide for the formation of chambers of commerce, boards of trade, mechanic institutes, and other kindred protective associations," approved March thirty-first, eighteen hundred and sixty-six, whether proven by a witness or otherwise, and all certificates in writing heretofore made, signed, and acknowledged, and filed under section two of said act, though said certificates and acknowledgments be defective or irregular, are hereby legalized and made valid.

Sec. 2. This act shall take effect and be in force from and after its passage.

ANIMALS.

An act to prevent combinations to obstruct the sale of livestock in the state of California.

[Approved February 27, 1893; Stats. 1893, 30.]

§ 1. Combinations to prevent buying livestock prohibited.
§ 2. Corporations prohibited.
§ 3. By-laws of corporations.
§ 4. Trusts, combinations or conspiracies.
§ 5. Selling livestock at any market.
§ 6. Punishment.

Section 1. It shall be unlawful for any two or more persons or corporations to combine or agree together to do any act which will, in any respect, prevent any person from buying livestock at any place in this state from any person having the same for sale, either for himself or as the representative or agent of the owner of the same.

Sec. 2. It shall be unlawful for any corporation organized under the laws of this state, or any board of directors or trustees, or stockholders, or agents, or officers of any corporation, to have, pass, or enforce any rule, by-law, or regulation whereby any officer, stockholder, member, shareholder, agent, servant thereof, or any other person in any way interested in or connected with such corporation, shall in any respect be prohibited, prevented, or enjoined from buying livestock from any other person having such livestock for sale, either as owner thereof, or as the agent, representative, or assistant of such owner, in any market in this state, where livestock is brought to be sold.

Sec. 3. Every rule, regulation, or by-law of any corporation doing business in this state, which has for its purpose, or which, directly or indirectly, tends to prevent its members or stockholders from freely purchasing livestock from any person lawfully having the same for sale, upon any livestock market of this state, are hereby declared to be contrary to the public policy of this state, and unlawful and void; and any person or persons who shall attempt, directly or indirectly, to enforce any such rule, regulation or by-law, shall be deemed guilty of a misdemeanor, and in addition to the penalties prescribed by this act shall be personally liable for all damages which

may arise from the enforcement of such rule, regulation, or by-law, to any person damaged thereby.

Sec. 4. No trusts, combinations, or conspiracies shall be organized or exist in this state, to prevent any person or persons, or corporation, from selling livestock on commission, for such an amount of commission as any person engaged in the business may see fit to charge; and all rules, regulations, by-laws, or agreements of any corporation, association, society, or combination of persons, whereby any such corporation, society, association, or combination of individuals are required to charge not less than a given sum for commissions, or whereby any person or commission merchant is, in any respect, restrained from charging less than a certain fixed sum for his services as such commission merchant in the sale of livestock, are hereby declared to be contrary to the public policy of this state, and unlawful. And any person who shall enter into any such trust, combination, or conspiracy, or who shall enforce or aid, abet, assist, or encourage the enforcement of any such rule, regulation, by-law, or agreement, shall be liable to the penalties prescribed by this act, and also shall be personally liable to any person, individual, society, or corporation who may be injured in his property or business thereby, to the full extent of the injury resulting therefrom.

Sec. 5. Whoever shall, directly or indirectly, be a party to any combination, conspiracy, or association, which attempts, directly or indirectly, to prevent any other person from freely selling livestock at any market in this state for such persons as see fit to engage his services, or shall endeavor to compel, directly or indirectly, any person to charge not less than a fixed minimum sum for services in the sale of livestock, or shall, in any way, hinder or prevent another from lawfully selling livestock for another, for such rate of commission as may be agreed upon by the owner of the livestock and the commission merchant, shall be deemed guilty of a misdemeanor, and suffer the penalties prescribed by this act, and shall be personally liable to anyone aggrieved thereby, for the full amount of any damage sustained by such person.

Sec. 6. Anyone who shall violate the provisions of this act shall be punished by a fine in any sum not less than five hundred dollars, and not more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by either or both, in the discretion of the

court, and shall be liable, in civil action, to any person aggrieved, in such damages as he or she may have sustained by the violation of this act.

Sec. 7. This act shall take effect and be in force from and after its passage.

APPRENTICES.

An act relative to apprentices and masters.

[Approved April 3, 1876; 1875-6, 842; amended 1880, p. 28.]

§ 1. Minors may be apprenticed.
§ 2. By whom.
§ 3. Consent of minor necessary.
§ 4. Indentures.
§ 5. Idem.
§ 6. Idem—What to be decided before they take effect.
§ 7. Executor may bind.
§ 8. Superior court may bind.
§ 9. Obligations of master.
§ 10. Money consideration and clothes.
§ 11. Treatment of apprentices.
§ 12. Age to be stated.
§ 13. Court to hear complaints.
§ 14. Court may discharge apprentice.
§ 15. Liability of master.
§ 16. Action against apprentice for neglect, misdemeanor, etc.
§ 17. Court may dissolve apprenticeship.
§ 18. Liability of parties to indenture.
§ 19. Misdemeanor.
§ 20. When master removes from this state.

Minors may be apprenticed.

Section 1. All minors, at the age of fourteen years, may be bound by covenant or indenture, in conformity with the stipulations herein specified, to any mechanical trade or art or the occupation of farming, as apprentices; males to the age of twenty-one years, and females to the age of eighteen.

Minors may be apprenticed by whom.

Sec. 2. Minors, at or above the age of fourteen years, may be bound by the father, or in case of his death, incompetency, or where he shall have willfully abandoned his family for one year, without making suitable provision for their support, or has become an habitual drunkard, vagrant, etc., then by their mother, or by their legal

guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the superior court of the county where they reside; but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage, and shall not be exercised by herself or her husband, at any time during her marriage, without the approval of the superior court of the county wherein she or he resides. [Amendment approved April 9, 1880; Amendments 1880, 28 (Ban. ed. 177). Took effect immediately.]

See post, secs. 6, 7, 8.

Consent of minor necessary.

Sec. 3. In all cases the consent of the minor, personally, is required as a party to the covenant, and should be so expressed in the indenture, and testified by his or her signing the same.

Indentures.

Sec. 4. Indentures shall be signed, sealed, and delivered, in duplicate copies, in the presence of all the parties concerned, and when made with the approbation of the superior court, or the judge thereof, in vacation, such approbation shall be certified in writing, indorsed upon each copy of the indenture. One copy of the indenture shall be kept for the use of the minor by his parent or guardian (when executed by them respectively), but when made with the approbation of the court, it shall be deposited in the safekeeping of the clerk of said court for the use of the minor. The other copy shall be held by the master, and delivered up by him to the apprentice at the expiration of his term of service. [Amendment approved April 9, 1880; Amendments 1880, 28 (Ban. ed. 178). Took effect immediately.]

Same.

Sec. 5. No indenture of apprentice, made in pursuance of this act, shall bind the minor after the death of his master, but the apprenticeship shall be thenceforth discharged, and the minor may be bound out anew.

Same.

Sec. 6. Facts of incapacity, desertion, drunkenness, vagrancy, etc., shall be decided in the said court by a jury, before the indenture shall take effect, and an indorsement

on the indenture, under seal of the court, that the charge or charges are proved, shall be sufficident evidence of the mother's power to give such consent; but if the jury do not find the charge or charges to be true, the person at whose instance such proceedings may have been had shall pay all costs attending the same. [Amendment approved April 9, 1880; Amendments 1880, 28 (Ban. ed. 178). Took effect immediately.]

Executor may bind.

Sec. 7. The executor, who by the will of the father is directed to bring up his child to a trade or calling, shall have power to bind such by indenture in like manner as the father, if living, might have done.

Superior court may bind.

Sec. 8. When any minor who is poor, homeless, chargeable to the county, or an outcast, has no visible means of obtaining an honest livelihood, it shall be lawful for the said court to bind such apprentice until, if a male, he arrives at the age of twenty-one, and if a female, to the age of eighteen. [Amendment approved April 9, 1880. Amendments 1880, 28 (Ban. ed. 178). Took effect immediately.]

Obligations of masters.

Sec. 9. It shall be unlawful for any master to remove an apprentice out of this state; and in all indentures by the said court for binding out an orphan, or homeless minor, as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: That the master to whom such minor shall be bound shall cause the same to be taught to read and write, and the ground rules of arithmetic, and the ratio and proportion, and shall give his requisite instruction in the different branches of his trade or calling, and at the expiration of his term of service shall give him two full new suits of clothes and the sum of fifty dollars gold; and if a female, she shall have two fine new suits of clothes and the sum of fifty dollars, gold; the two new suits in either case to be worth at least sixty dollars, gold. [Amendment approved April 9, 1880; Amendments 1880, 29 (Ban. ed. 178.) Took effect immediately.]

Money considerations and clothes the property of apprentice.

Sec. 10. All considerations of money or clothes paid or allowed by the master, in conformity with the foregoing section, are the sole property of the apprentice, and to whom the master is accountable for the same, and he shall pay or donate into the hand of the apprentice alone.

Treatment of apprentices.

Sec. 11. Parents and guardians and the said court shall, from time to time, inquire into the treatment of the children bound by them, respectively, or with their approbation; and the judges of the said courts shall be responsible for the charge of indentured apprentices bound by the approbation of their predecessors in office, and defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters. [Amendment approved April 9, 1880; Amendments 1880, 29 (Ban. ed. 178). Took effect immediately.]

Age to be stated.

Sec. 12. The age of every apprentice shall be inserted in the indenture, and all indentures entered into otherwise than as is herein provided shall be, as to all apprentices under age, utterly void.

Court to hear complaints.

Sec. 13. The superior court shall hear the complaints of apprentices, who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship; and the court may hear and determine such cases, and make such order therein as will relieve the party in the future. [Amendment approved April 9, 1880; Amendments 1880, 29 (Ban ed. 179). Took effect immediately.]

Court may discharge apprentice.

Sec. 14. The superior court shall have power, where circumstances require it, to discharge an apprentice from his

apprenticeship, and in case any money, or other thing, has been paid or contracted to be paid by either party in relation to such apprenticeship, the court shall make such order concerning the same as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the superior court, it shall be the duty of the court, if found necessary, again to bind such apprentice, if under age. [Amendment approved April 9, 1880; Amendments 1880, 29 (Ban. ed. 179.) Took effect immediately.]

Liability of master.

Sec. 15. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and shall be applied and appropriated to his use by the person who shall recover the same, and shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If such action is not brought during the minority of such apprentice, it may be commenced in his own name at any time within six months after coming of age, but not later than two years.

Action against apprentice for neglect, misdemeanor, etc.

Sec. 16. An apprentice who shall be guilty of any gross misbehavior, or refusal to do his duty, or willful neglect thereof, shall render himself liable to the complaint of the master in the superior court of the county wherein he resides, which complaint shall set forth the circumstances of the case; and to said complaint shall be attached a citation, signed by the clerk of said court, requiring the apprentice, and all persons who have covenanted in his behalf, to appear and answer to such complaint, which complaint and citation shall be served on them in the usual manner of serving civil process. [Amendment approved April 9, 1880; Amendments 1880, 29 (Ban. ed 179). Took effect immediately.]

Court may dissolve apprenticeship.

Sec. 17. The court shall proceed to hear and determine the cause, and after a full hearing of the parties, or if the

adverse party shall neglect to appear after due notice, the court may render judgment or decree that the master be discharged from the contract of apprenticeship, and for the costs of suit; such costs to be recovered of the parent or guardian of the minor, if there be any who signed the indenture, and execution therefor issued accordingly; and if there be no parent or guardian liable for such costs, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he shall arrive at full age.

Liability of parties to indenture.

Sec. 18. The parties to an indenture shall also be liable to the master in an action on the indenture, for the breach of any covenant on their part therein contained, committed before the master was so discharged from such indenture.

Misdemeanor.

Sec. 19. It shall be unlawful for any person to entice, counsel, or persuade to run away any apprentice, or employ, harbor, or conceal such, knowing said apprentice to be a runaway; and the parties so offending shall be guilty of a misdemeanor, and be subject to fine of not less than fifty and not more than one hundred dollars, to be recovered by the master in any court having jurisdiction thereof.

When master removes from this state.

Sec. 20. Whenever any master of an apprentice shall wish to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the superior court of the proper county, and if the court be satisfied that the master has done justice to the said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person. [Amendment approved April 9, 1880; Amendments 1880, 30 (Ban. ed. 179). Took effect immediately.]

Sec. 21. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its passage.

BANKS AND BANKING.

[See acts relating to this subject in volume of General Laws, title Banks and Banking.]

An act to repeal an act entitled "An act concerning corporations and persons engaged in the business of banking," approved April 1, 1876.

[Approved March 26, 1895; Stats. 1895, p. 77.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. That an act entitled "An act concerning corporations and persons engaged in the business of banking," approved April first, eighteen hundred and seventy-six, be and the same is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its passage.

[This act was also repealed in 1893, Stats. 1893, p. 112.]

An act to compel savings banks to publish a sworn statement of all unclaimed deposits.

[Approved March 23, 1893; Stats. 1893, p. 183.]

Section 1. The cashier or secretary of every savings bank, savings and loan society, and every institution in which deposits of money are made and interest paid thereon, shall, within fifteen days after the first day of December, in the year one thousand eight hundred and ninety-three, and within fifteen days of the first day of December of each and every second succeeding year thereafter, return to the board of bank commissioners a sworn statement, showing the amount standing to his credit, the last known place of residence or postoffice address, and the fact of death, if known to said cashier or secretary, of every depositor who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit, or any part of the interest thereon, for a period of more than ten years next preceding; and the cashiers or secretaries of such savings banks, savings and loan

societies, and institutions for deposit of savings, shall give notice of these deposits in one or more newspapers published in or nearest to the city, city and county, or town where such banks are situated, at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of said unclaimed deposits; provided, however, that this act shall not apply to or effect the deposit made by or in the name of any person known to the said cashier, or secretary to be living, any deposit which, with the accumulation thereon, shall be less than fifty dollars.

Sec. 2. The board of bank commissioners shall incorporate in their subsequent report each return which shall have been made to them, as provided in section one of this act.

Sec. 3. Any cashier or secretary of either of the banking institutions mentioned in section one of this act neglecting or refusing to make the sworn statement required by said section one, shall be guilty of a misdemeanor.

An act to compel all depositaries of money and commercial banks to publish a sworn statement of all unclaimed deposits.

[Approved February 25, 1897, p. 27.]

§ 1. Sworn statement, duty to file.
§ 2. Bank commissioners to report.
§ 3. Misdemeanor.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The president, cashier, or secretary of every bank, depositary, society, or institution of every kind or character which receive money on deposit, or in which deposits of money are made, and upon which deposits no interest is paid, shall within fifteen days after the first day of June in the year one thousand eight hundred and ninety-seven, and within fifteen days of the first day of June of each and every second succeeding year thereafter, return to the board of bank commissioners, a sworn statement showing the amount standing to his credit, the last known place of residence or postoffice address, and the fact of

death, if known to said president, cashier, or secretary, of every depositor of such bank, depositary, society, or institution, who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit or funds to his credit therein, for a period of more than ten years next preceding; and the presidents, cashiers, or secretaries, of all such banks, depositaries, societies, and institutions, which receive money on deposit or in which deposits of money is made, shall give notice of these deposits, in one or more newspapers published in or nearest to the city, city and county, or town where such banks, depositaries, societies, or institutions are situated, at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of said unclaimed deposits; provided, however, that this act shall not apply to or affect the deposit made by or in the name of any person known to the said presidents, cashiers, or secretaries, to belong, or any deposit which, with the accumulations thereon, shall be less than fifty dollars.

Sec. 2. The board of bank commissioners shall incorporate in their subsequent report each return which shall have been made to them, as provided in section one of this act.

Sec. 3. Any president, cashier, or secretary or either of the banks, depositaries, societies, or institutions named in section one of this act, neglecting or refusing to make the sworn statement required by said section one, shall be guilty of a misdemeanor.

An act providing for the dissolution and winding up of savings banks, trust companies, and banks of deposit, and providing for the disposition of all funds deposited therein and not claimed within five years after such banks have ceased to do business, or after the commencement of proceedings to dissolve.

[Approved March 31, 1891; Stats. 1891, p. 271.]

§ 1. Right to dissolve savings banks, etc.
§ 2. Dissolved savings bank fund.
§ 3. How drawn upon.
§ 4. When same escheats.
§ 5. Attorney general empowered to bring actions.
§ 6. Investment of funds.
§ 7. Bonds purchased.
§ 8. To sell bonds to meet payments.

Section 1. That any savings bank or trust company or bank of deposit heretofore created or which may be here-

after created shall have the right, on application of the stockholders or members to the superior court of the county wherein its principal place of business is situated, to dissolve said corporation in the manner provided for in title six, part three, of the Code of Civil Procedure.

Sec. 2. It is hereby made the duty of every person or corporation holding funds of any savings bank or trust company or bank of deposit, at the end of five years from and after such bank has ceased to receive deposits or do business, to pay the same into the state treasury, which money shall be held in the state treasury in a fund which is hereby designated as "the dissolved savings bank fund"; and at the same time it shall be the duty of such person or corporation to furnish to the state controller a list of the names of all depositors to whom said moneys belong or to whom said bank owes the same.

Sec. 3. The money in said "the dissolved savings bank fund" may be drawn out on the warrants of the state controller, issued on proofs of ownership, approved and allowed by the state board of examiners.

Sec. 4. All moneys paid into the said "the dissolved savings bank fund" uncalled for within five years after being paid in shall escheat to the state, and thereafter only drawn out in such manner as now provided for by law for the estates of deceased persons escheated to this state.

Sec. 5. That any person or corporation failing to comply with the provisions of this act shall be liable to the state of California for the amount of money so retained by them contrary to the provisions of the first four sections of this act; and the attorney general of this state is hereby authorized, empowered, and directed to bring action, in the name of the people of the state of California, in such manner and upon the same terms as now provided for escheated estates, to recover judgment for said money, and when so recovered, to be paid into the state treasury and held subject to the provisions of this act; provided, that said fund shall be liable for the expense of the recovery of the same, to be paid out upon demands audited by the state board of examiners.

Sec. 6. Whenever and as often as there is in the state treasury to the credit of the said "the dissolved savings bank fund" the sum of ten thousand dollars, the state board of examiners must invest the same in civil funded

bonds of this state, or in bonds of the United States, or in bonds of the several counties of this state; the investments to be made in such manner and upon such terms as the board shall deem for the best interests of the said "the dissolved savings bank fund"; provided, that no bonds of any counties shall be purchased, of which the debt, debts, or liabilities at the time exceed fifteen per cent of the assessed value of the taxable property of said county.

Sec. 7. All bonds purchased by the board under the provisions of this act must be delivered to the state treasurer, who shall keep them as a portion of said "the dissolved savings bank fund," the interest upon such bonds to be placed by him to the credit of said fund.

Sec. 8. Whenever the moneys on hand in the state treasury, to the credit of the said "the dissolved savings bank fund" is not sufficient to pay the claims allowed by the state board of examiners against said fund, it shall be the duty of said board to sell such bonds belonging to said fund as they may deem proper, for the purpose of providing funds for the payment of such claims so allowed by them.

Sec. 9. This act shall take effect from and after its passage.

BENEFIT SOCIETIES.

An act relating to mutual benefit and relief associations.

[Approved March 28, 1874; 1873-4, 745. Amended 1880, 25; 1901, 6.]

§ 1. Mutual beneficial and relief associations.
§ 2. How formed.
§ 3. Powers.
§ 4. Idem.
§ 5. By-laws.
§ 6. Old associations.

Mutual beneficial and relief associations.

Section 1. Associations may be formed for the purpose of paying to the nominee of any member, a sum upon the death of said member, not exceeding three dollars for

each member of such association. No such association shall exceed in number three thousand persons. [Amendment approved February 14, 1901, Stats. 1901, p. 6.]

How formed.

Sec. 2. Such association shall be formed by filing a verified certificate in the office of the clerk of the county in which the principal place of business shall be situated, and filing a like certificate in the office of the secretary of the state. Such certificate shall state the general objects of the association, its principal place of business, and the names of the officers selected to hold office for the first three months, and shall be signed by said officers, and verified by at least three of them.

Powers.

Sec. 3. Said associations, upon the death of each member, may levy an assessment upon each member living at the time of the death, not exceeding three dollars for each member, and collect the same, and pay the same to the nominee of such deceased, and may also provide the payment of such annual payments of members as may be deemed best, such annual assessment upon any one member not to be raised above the annual assessment established at the time such member joins such association.

Idem.

Sec. 4. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and other real estate as it may be necessary to purchase on foreclosure of its mortgages; provided, such real estate so obtained through foreclosure shall be sold and conveyed within five years from the day title is obtained, unless the superior court of the proper county shall, upon petition and good cause shown, extend the time. [Amendment approved April 6, 1880; Amendments 1880, 25. (Ban. ed. 128.) Took effect immediately.]

By-laws.

Sec. 5. Such association may make such by-laws, not inconsistent with the laws of this state, as may be neces-

sary for its government, and for the transaction of its business, and shall not be subject to the provisions of the general insurance laws.

Old associations.

Sec. 6. All associations heretofore formed for the objects contemplated by this act, and now in operation, may avail themselves of its provisions by filing the certificate provided for in section one; provided, that such society shall not have greater membership than three thousand.

Sec. 7. This act shall take effect immediately.

BOARDS OF TRADE: See post, title Chambers of Commerce.

BONDS.

An act to facilitate the giving of bonds required by law.

[Approved March 12, 1885; 1885, 114.]

§ 1. Incorporation for giving bonds.
§ 2. When corporation not accepted.
§ 3. Duty of insurance commissioner.

Incorporations for giving bonds.

Section 1. Whenever any person who now or hereafter may be required or permitted by law to make, execute, and give a bond or undertaking, with one or more sureties, conditioned for the faithful performance of any duty, or for the doing or not doing of anything in said bond or undertaking specified, any head of department, board, court, judge, officer, or other person who is now or shall hereafter be required to approve the sufficiency of any such bond or undertaking, or the sureties thereon, may accept as sole and sufficient surety on such bond or undertaking, any corporation incorporated under the laws of any state of the United States for the purpose of making or guaranteeing bonds and undertakings required by law, and which shall have complied with all the requirements of the laws of this state regulating the admission of such corporation to transact such business in this state; and all such corporations are hereby vested with full power and authority to make and guarantee such bonds and undertakings, and shall be subject to all the liabili-

ties and entitled to all the rights of natural persons sureties.

When corporation not accepted.

Sec. 2. It is further provided that the guaranty of any such company shall not be accepted by heads of departments or others, as provided in section one of this act, whenever its liabilities shall exceed its assets, as ascertained in the manner provided in section three of this act.

Duty of insurance commissioner.

Sec. 3. Whenever the liabilities of any such company shall exceed its assets, the insurance commissioner shall require the deficiency to be paid up within sixty days, and if it is not so paid up then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for three weeks in a daily San Francisco paper, and thenceforth, and until such deficiency is paid up, such company shall not do business under the provisions of this act. And in estimating the condition of any such company, under the provisions of this act, the commissioner shall allow as assets only such as are authorized under existing laws at the time, and shall charge as liabilities, in addition to eighty per cent of the capital stock, all outstanding indebtedness of the company, and a premium reserve equal to fifty per centum of the premiums charged by said company on all risks then in force. Nothing herein contained shall apply to bonds given in criminal cases.

Sec. 4. This act shall take effect immediately.

BUILDING AND LOAN ASSOCIATIONS.

An act creating a board of commissioners of the building and loan associations and prescribing their duties and powers.

[Approved March 23, 1893; Stats. 1893, p. 229. Amended 1895, 103.]

§ 1. Board of commissioners.
§ 2. Salaries.
§ 3. Office, rent, stationery, etc.
§ 4. Bond.
§ 5. Duties of—Report.
§ 6. Visiting associations.
§ 7. Duties of associations.
§ 8. Powers of.
§ 9. Duty of attorney general—Receivers.
§ 10. Failure to report to attorney general.

§ 11. Schedule of property.
§ 12. Examining accounts of receivers.
§ 13. Investigation of affairs.
§ 14. Violation of laws relating to corporations.
§ 15. Associations to pay assessment.
§ 16. How collections may be enforced.
§ 17. Licenses.
§ 18. Report to commissioners.
§ 19. Withdrawal of stockholders.
§ 20. "Building and loan association," what includes.

Section 1. All building and loan associations heretofore or hereafter incorporated under the laws of this state, or any other state or territory, or those of any foreign country, and doing business in this state, shall be subject to the examination and supervision of a board of commissioners of loan association, which board shall consist of two commissioners, each of whom shall be an expert of accounts, and shall be appointed by the governor, within thirty days after the passage of this act, to hold office for the period of four years, and until their successors are appointed and qualified.

Sec. 2. The commissioners shall each receive a salary of twenty-four hundred dollars per annum and necessary traveling expenses, not to exceed for the two commissioners and their secretary, the sum of seven hundred dollars per annum. Said commissioners are hereby authorized to appoint a secretary at a salary not to exceed twelve hundred dollars per annum, who shall have power to examine the books and affairs of the associations, the same as the commissioners. All said salaries and traveling expenses shall be audited by the state controller and paid in the same manner as the salaries of other state officers. [Amendment approved March 26, 1895; Stats. 1895, 103.]

Sec. 3. The commssioners shall have their office in San Francisco, which office shall be kept open for business every business day, and during such hours as are commonly observed by the banks of that city as banking hours. They shall procure rooms for their office at a monthly rental not exceeding forty dollars. They may also provide fuel, stationery, printing, and other necessary conveniences connected with their office, not to exceed an aggregate cost of four hundred dollars per annum. All expenses authorized in this section shall be audited and paid in the same manner as the salary of the commission-

ers. [Amendment approved March 26, 1895; Stats. 1895, p. 103.]

Sec. 4. The commissioners, before entering upon the duties of their office, must each execute an official bond in the sum of five thousand dollars, and take the oath of office as prescribed by the Political Code for state officers in general. The secretary appointed by said commissioners shall execute a bond in the sum of two thousand dollars, and take the oath of office as prescribed by said Political Code. [Amendment approved March 26, 1895; Stats. 1895, p. 103.]

Sec. 5. The duties of the commissioners of building and loan associations shall be to furnish all corporations legally authorized to transact the business of a building and loan association within this state a license authorizing them to transact the business of a building and loan association for one year from the date of said license; to receive and place on file in their office the annual reports required to be made by building and loan associations by this act; to supply each association with blank forms and such statements as the commissioners may require; to make, on or before the first day of October of each year, a tabulated report to the governor of this state, showing the condition of all institutions examined by them, with such recommendations as they may deem proper, accompanied by a detailed statement, verified by oath, of all moneys received and expended by them since their last report. [Amendment approved March 26, 1895; Stats. 1895, p. 103.]

Sec. 6. The commissioners shall visit, once in every year, and as much oftener as they may deem expedient, every building and loan association doing business in this state. At such visits, they shall have free access to the vaults, books, and papers, and shall thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as may be necessary to ascertain its condition and ability to fulfill all its engagements, and whether it has complied with the provisions of law governing such associations; they shall preserve in a permanent form a full record of their proceedings, including a statement of the condition of each of said corporations, which shall be open to the inspection of the public during their office hours.

Sec. 7. To facilitate the examinations of the commis-

sioners, as specified in the foregoing section, every association shall keep a book of records, written in ink, showing the appraised values of the real estate security held in connection with each loan, and signed in each case by the appraiser or officer or committee of the association making such estimate value. The commissioners shall have power to order a revaluation of the securities of any building and loan association when they deem it necessary, and may, for that purpose, appoint local appraisers at the expense of such association, the total expense of such appraisement not to exceed two dollars and fifty cents for each property examined and appraised. Each appraiser shall make a sworn report to the commissioners of the appraised values of all property examined. [Amendment approved March 26, 1895; Stats. 1895, p. 104.]

Sec. 8. Either of the commissioners may summon all trustees, officers, or agents of any such corporation, and such other witnesses as he thinks proper, in relation to the affairs, transactions, and condition of the corporation, and for that purpose may administer oaths; and whoever refuses, without justifiable cause, to appear and testify, when thereto required, or obstructs a commissioner in the discharge of his duty, shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment.

Sec. 9. If the commissioners, upon examination of any corporation under their supervision, find that such corporation has been violating the provisions of law governing such associations, or is conducting its business in an unsafe manner, such as to render its further proceeding hazardous to the public or to those having funds in its custody, they shall notify the attorney general of such facts, and the attorney general, in his discretion, may apply to the judge of the superior court of the county in which such corporation is doing business to issue an injunction restraining such corporation, in whole or in part, from further proceeding with its business until a hearing can be had. Such judge may, in such application, issue such injunction, and, after a full hearing, may dissolve or modify it, or make it perpetual, and may make such orders and decrees, according to the course of proceedings in

equity, to restrain or prohibit the further prosecution of the business of the corporation, as may be needful in the premises; and may appoint one or more receivers to take possession of its property and effects, subject to such directions as may from time to time be prescribed by the court.

Sec. 10. And if either of the commissioners, having knowledge of the insolvent condition, or any violation of law, or unsafe practice of any association under their supervision, such as renders, in their opinion, the conduct of its business hazardous to its shareholders or depositors, shall fail to report the same in writing to the attorney general, as required by this act, then such commissioner, on conviction thereof, shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars, or by imprisonment in the county jail not less than one year nor more than two years, or by both such fine and imprisonment; and his office shall be declared vacant by the governor, and a successor appointed to fill his unexpired term.

Sec. 11. When receivers are so appointed, the secretary of the corporation shall make a schedule of all its property, and its secretary, board of investment, and other officers transferring its property to the recivers, shall make oath that said schedule sets forth all the property which the corporation owns, or is entitled to. The secretary shall deliver said schedule to the receivers, and a copy thereof to the commissioners, who may at any time examine, under oath, such secretary, board of investment, or other officers, in order to determine whether or not all the property which the corporation owns, or is entitled to, has been transferred to the receivers.

Sec. 12. The commissioners, or one of them, shall, at least once in each year, and as much oftener as they may deem expedient, examine the accounts and doing of all such receivers, and shall carefully examine and report upon all accounts and reports of receivers made to the proper court and referred to the commissioners by the court, and, for the purposes of this section, shall have free access to the books and papers relating to the transactions of such receivers, and may examine them under oath relative to such transactions.

Sec. 13. Upon the certificate, under oath, of any five or more officers, trustees, creditors, shareholders, or depositors of any such corporation, setting forth their interest and the reasons for making such examination, directed to the commissioners, and requesting them to examine such corporation, they shall forthwith make a full investigation of its affairs, in the manner provided.

Sec. 14. The commissioners, if in their opinion any such corporation or its officers or trustees have violated any law in relation to such corporations, shall forthwith report the same, with such remarks as they deem expedient, to the attorney general, who shall forthwith institute a prosecution for such violation, in behalf of the people of the state.

Sec. 15. To meet the expenses provided by this act, every building and loan association, or corporation or association doing business on the building and loan plan, shall pay, in advance, to the commissioners, its pro rata amount of such expenses, to be determined by an assessment levied on the shares of each of such associations in force on the thirty-first day of December, eighteen hundred and ninety-two, pro rata, according to the par value of such shares; and annually thereafter the said commissioners shall levy, in a like manner, and collect in advance, a like assessment on the shares of all such associations in force as per report, herein provided for, to be made to said commissioners, of the condition at the close of business on December thirty-first of each year; provided, however, that no association shall pay less than ten dollars per annum; and all associations hereafter organized shall each pay to the commissioners for their licenses not less than one dollar per month for the term expiring December thirty-first succeeding, dating from the time of application for license. [Amendment approved March 26, 1895; Stats. 1895, p. 104.]

Sec. 16. The collection of all moneys assessed, as herein provided, for the annual expenses, or forfeitable as fines for failure to make reports as herein specified, and due from any corporation or association coming within the provisions of this act, may be enforced by action instituted in any court of competent jurisdiction, and all

moneys collected or received by the said commissioners under this act shall be deposited with the state treasurer, to the credit of a fund to be known and designated as the "Building and Loan Association Inspection Fund."

Sec. 17. No association shall transact business in this state without first procuring from the commissioners of building and loan associations a certificate of authority or license to do so. To procure such authority it must file with the said commissioners a certified copy of its articles of incorporation, constitution, and by-laws, and all other printed rules and regulations relating to its methods of conducting business; and of all subsequent amendments or changes thereto, and otherwise comply with all requirements of law. No association, after the expiration of the term for which a license has been granted to it by the commissioners of building and loan associations, shall continue to transact the business of a building and loan association without first procuring from said commissioners a renewal of such license on the terms provided for in this act; and any corporation violating this provision shall forfeit the sum of ten dollars per day during the continuance of the offense; and any violation of this section by any officer of such association shall be a misdemeanor. The commissioners are authorized and empowered to revoke the license of any association under their supervision, the solvency whereof is imperiled by losses or irregularities; and the commissioners immediately upon revoking such license shall report the facts to the attorney general, who shall thereupon take such proceedings as is provided by section nine of this act. [Amendment approved March 26, 1895; Stats. 1895, p. 104.]

Sec. 18. Every building and loan association doing business in this state shall, once in every year, to wit, within thirty days after the expiration of its annual fiscal term, make a report, in writing, to the commissioners of building and loan associations, verified by the oath of its president and secretary showing accurately the financial condition of such association at the close of said term. The report shall be in such form as the commissioners shall prescribe, upon blanks by them furnished for that purpose, and shall specify the following particulars, namely:

Name of the corporation, place where located, authorized capital stock, amount of stock paid in, the names of the directors, the amount of capital stock held by each, the amount due to shareholders, the amount and character of all other liabilities, cash in hand, and the number and value of shares in each and every series of stock issued by the association. All moneys received or disbursed by such association shall be duly accounted for. Any association failing to file the annual report within the time specified herein, shall be subject to a penalty of ten dollars per day for each and every day such report shall be delayed or withheld. [Amendment approved March 26, 1895; Stats. 1895, 105.]

Sec. 19. Stockholders desiring to withdraw from any association, or to surrender a part or all of their stock, shall have power to do so by giving thirty days' notice in writing of such intention to withdraw. On the expiration of such notice, the stockholder so withdrawing shall be entitled to receive the full amount paid in by him or her, together with such proportion of the earnings thereon as the by-laws may provide, or as may have been fixed by the board of directors; provided, that not more than one-half of the monthly receipts in any one month shall be applied to withdrawals for that month, without the consent of the board of directors, and no shareholder shall be permitted to withdraw, whose stock is pledged as security to the association for a loan until such loan is fully paid. Such withdrawals shall be paid in succession, in the order that the notices are given.

Sec. 20. The name "Building and Loan Association," and all reference to the same as "association" or "associations," as used in this act, shall include all corporations, societies, or organizations, investment companies, or associations, whether organized in this state or represented by agents, doing a savings and loan or investment business, and which are not under the direct supervision of the bank commissioners or the insurance commissioner, and whether issuing certificates of stock which mature at a time fixed in advance or not, and shall also include any association or company which is based on the plan of building and loan associations, and which contains features similar to such associations; and said commissioners are hereby vested with the power of determining whether such association or associations contain such features as are

based on plans similar to those of building and loan associations, and whether they properly come within the purview of this act. [Amendment approved March 26, 1895; Stats. 1895, 105.]

Sec. 21. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its passage.

CEMETERIES.

Act authorizing incorporation of rural cemetery corporations: See act of April 28, 1859; Stats. 1859, p. 281; and amendments 1863-4, p. 12; 1891, p. 264. See, also, act of March 2, 1899, Stats. 1899, 36, supplemental to the act of April 28, 1859.

Act providing manner of execution of deeds by cemetery corporations: See post, title Corporations.

CHAMBERS OF COMMERCE.

An act to provide for the formation of chambers of commerce, boards of trade, mechanic institutes, and other kindred protective associations.

[Approved March 31, 1866; 1865-6, 469. Amended 1867-8, 5; 1885, 76.]

This act came within the provisions of the repealing clause in section 288, Civil Code. It was, however, amended by the act of 1885, p. 76, and is therefore set out in full.

§ 1. Corporations may be formed.
§ 2. Certificate of incorporation.
§ 3. Certified copy shall be evidence.
§ 4. Corporations, rights and powers.
§ 5. Stock and certificates.
§ 6. Trustees, etc.
§ 7. Real and personal estate.
§ 8. By-laws.
§ 9. Meetings.
§ 10. Power to levy assessments.
§ 11. Existing corporations.

Corporations may be formed.

Section 1. That corporations for the formation and organization of chambers of commerce, boards of trade,

mechanic institutes, and other associations for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts and sciences, may be formed and organized according to the provisions of this act, and such corporations and the members thereof shall be subject to the liabilities herein imposed, and to none other.

Certificate of incorporation.

Sec. 2. Any twenty or more persons who may desire to form a corporation for either of the purposes specified in the preceding section shall make, sign, and acknowledge, before some officer competent to take acknowledgment of deeds, and file in the office of the county clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the corporation, the object for which the corporation shall be formed, the time of its existence, not to exceed fifty years, and the name of the city or town, and county, in which the principal place of business of the corporation is to be located.

Certified copy shall be evidence.

Sec. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the county clerk of the county in which it is filed, or his deputy, or by the secretary of state, shall be received in all courts, actions, proceedings and places, as presumptive evidence of the facts therein stated.

Corporation—Rights and powers.

Sec. 4. When the certificate provided for in section two of this act shall have been filed as therein provided, the persons who shall have signed and acknowledged the same, and such persons as shall thereafter become their associates or successors, shall be a body politic and corporate, and by their corporate name have succession for the period limited and power:

1. To sue and be sued in any court;

2. To make and use a common seal, and to alter the same at pleasure;

3. To lease, purchase, hold, sell, mortgage, convey in

trust, convey, release from trust or mortgage, such real and personal estate as hereinafter provided in this act;

4. To elect or appoint such officers, agents, and servants as the business of the corporation shall require;

5. To make by-laws, not inconsistent with the laws of this state, providing for the organization of the corporation and the management of its affairs.

Stock and certificates.

Sec. 5. Corporations formed under this act may have a capital stock, and may issue certificates to represent shares of such capital stock; provided, that the certificate directed in the second section of this act to be executed and filed shall contain a statement of the amount of such capital stock and the number of shares into which it is divided; and provided, further, that the rights and privileges to be accorded to stockholders, as distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation, shall be fixed and established in the by-laws of each of such corporations.

Trustees, etc.

Sec. 6. Corporations formed under this act may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any portion of the corporate powers of the corporation; provided, that the certificate directed by the second section of this act to be executed and filed in those cases in which the right to exercise the corporate powers is confined to a board of trustees or directors, or to a body to be styled the executive committee of the corporation, shall state the fact, and also whether the right is limited or otherwise; and in such corporations the said certificate shall also state the number of such trustees or directors, or committee, and the names of those who shall have been selected to manage the affairs of the corporations for the first six months.

Real and personal estate.

Sec. 7. Corporations formed under the provisions of this act shall be capable in law to lease, purchase, have, hold, use, take possession of, and enjoy, in fee simple or otherwise, any personal or real estate within this state

necessary for the uses and purposes of such corporation, and the same to sell, lease, deed in trust, alien, and dispose of at their pleasure. All real estate owned by the corporation shall be held in the name of the same, and all conveyances made by such corporation shall be signed by the president and secretary, and attested by the corporate seal; provided, that no corporation formed under this act shall engage in any mercantile, commercial or mechanical business. [Amendment approved March 10, 1885; Statutes and Amendments 1885, 76; took effect from passage; repealed conflicting acts.]

See note under sec. 12, post.

[Act to legalize defective acknowledgments taken under this act: See ante, Appendix, title Acknowledgments.]

By-laws.

Sec. 8. The by-laws of all corporations formed under the provisions of this act without capital stock shall prescribe how members of the corporation shall be admitted, and how expelled, and how officers, agents, and servants shall be elected or appointed; and such provisions in the by-laws of any such corporation shall have full force and effect as between private parties and said corporation.

Meetings.

Sec. 9. Corporations formed under the provisions of this act shall determine by their by-laws the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the manner of levying and collecting assessments, the officers of the same, and the manner of their election or appointment, and their tenure of office; and may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case one hundred dollars for any one offense.

Power to levy assessments.

Sec. 10. Corporations formed under the provisions of this act having no board of trustees, or directors, or executive committee, shall have power to levy and collect from the members thereof, for the purpose of paying the proper and legal expenses of such corporation, assessments in the manner which may be prescribed by the by-laws of such corporation, and not otherwise.

Existing corporations may take benefit of this act.

Sec. 11. Any existing corporation, association, or institution formed for either of the purposes contemplated by this act, may, by a vote of a majority of the members voting at a meeting called specially for the purpose, become entitled to the benefit of this act on filing the certificate required by this act; provided, a notice of the meeting and its object shall be published in a paper of general circulation in the county in which the principal place of business of such corporation, association, or institution is located, for at least ten days previous to the day on which such meeting is to be held; and provided further, that the certificate herein provided to be filed shall be signed and acknowledged by at least five of the members of such corporation, association, or institution, and contain a list of the members who desire to become members of the corporation. And upon the filing of such certificate as provided by this act, the persons signing and acknowledging the same, and those named therein, and such persons as shall thereafter become their associates or successors, shall be a body politic and corporate, with all the powers and privileges conferred by this act, and shall thereupon succeed and become entitled to all the rights, franchises, and property of such corporation, association, or institution.

Effect.

Sec. 12. This act shall be in force from and after its passage; and all corporations formed under it are hereby exempted from the operation of all laws and parts of laws inconsistent with its provisions.

Section 1 of the above act contained a proviso originally limiting the amount of realty that could be held by incorporations under this statute to two hundred and fifty thousand dollars. This section was amended in 1868 by an act approved January 14, 1868, enlarging the amount to three hundred and fifty thousand dollars. The amendment of 1885 removes the limit altogether.

CO-OPERATIVE ASSOCIATIONS.

An act to provide for incorporation, operation, and management of co-operative associatons.

[Approved March 27, 1895; Stats. 1895, 221.]

§ 1. How formed.
§ 2. Rights and liabilities of members.
§ 3. Articles of association.
§ 4. By-laws, meetings, elections.
§ 5. By-laws to be recorded.
§ 6. Property is subject to execution.
§ 7. Business may be changed.
§ 8. Profits, how divided.
§ 9. Powers of associations.
§ 10. Associations may be consolidated.
§ 11. Associations may be dissolved.
§ 12. Rights of attorney general to bring suit.
§ 13. Act to be liberally construed.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. It shall be lawful for five or more persons to form a co-operative association for the purpose of transacting any lawful business. Such associations shall not have or issue any capital stock, but shall issue membership certificates to each member thereof, and such membership certificates cannot be assigned so that the transferee thereof can by such transfer become a member of the association except by the resolution of the board of directors of the association. But by the resolution of consent of the board of directors, such certificates may be transferred, so that the transferee may become a member in lieu of the last former holder thereof.

Sec. 2. In such association the rights and interest of all members shall be equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member shall be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, shall be eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws shall provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess

of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws.

Sec. 3. Every association formed under this act shall prepare articles of association, in writing, which shall set forth: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist (not to exceed fifty years), the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged shall be filed in the office of the secretary of state, who shall furnish a certified copy thereof, which shall be filed in the office of the county clerk of the county where the principal business of such association is to be transacted; and from the time of such filing in the office of said county clerk the association shall be complete, and shall have and exercise all the powers for which it was formed.

Sec. 4. Every association formed under this act must, within forty days after it shall so become an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this act. A majority of all the associates shall be necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same; and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment shall be given, as the by-laws may provide. Such association may, by its code of by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resigna-

tion, removal, or otherwise, and the power and authority of such directors, and how many thereof shall be necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise; provided, the method shall secure the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership shall cease, and the mode and manner of expulsion of a member subject to the right that an expelled member shall have a right to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors shall deem best, and to have the money, property, or labor so awarded him paid or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member shall be required to pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for nonpayment or nonperformance; the method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest shall be ascertained, either in money or property, and within what time the same shall be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same shall be paid to his legal representatives in money, or property, or labor, and within what time the same shall be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed.

Sec. 5. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted.

Sec. 6. The property of such association shall be subject to judgment and execution for the lawful debts of the association. The interest of a member in such association, if sold upon execution or any judicial or governmental order whatever, cannot authorize the purchaser to have any right except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors shall choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

Sec. 7. The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws shall provide for election of directors.

Sec. 8. The by-laws shall provide for the time and manner in which profits shall be divided between the members, and what proportion of the profits, if any, shall be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion.

Sec. 9. Every association formed under this act shall have power of succession by its associate name for fifty years; to, in such name, sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue

all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

Sec. 10. Two or more associations formed and existing under this act may be consolidated together, upon such terms and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such association. Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the secretary of state, and a certified copy thereof be filed in the office of the county clerk of the county where its principal business is to be transacted; and from and after the filing of such certified copy, the former association comprising the component parts shall cease to exist, and the consolidated association shall succeed to all the rights, duties, and powers of the component associations, and be possessed of all the rights, duties, and powers prescribed in the agreement of consolidated association not inconsistent with this act, and shall be subject to all the liabilities and obligations of the former component associations, and succeed to all the property and interests thereof, and may make by-laws and do all things permitted by this act.

Sec. 11. Any association formed or consolidated under this act may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request shall be addressed to the directors, and shall specify reasons why the winding up of the affairs of the association is deemed advisable, and shall name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom shall thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors shall cease and the persons appointed shall proceed to wind up the association,

and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two-thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association shall be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the state of California by its attorney general.

Sec. 12. The right of any association claiming to be organized under this act to do business may be inquired into by quo warranto, at the suit of the attorney general of this state, but not otherwise.

Sec. 13. This act being passed to promote association for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, educational, industrial, benevolent, social, or political purposes, whether conducted for profit or not, and this act shall not be strictly construed, but its provisions must at all times be liberally construed, with a view to affect its object and to promote its purposes.

Sec. 14. This act shall take effect immediately.

An act to define co-operative business corporations and to provide for the organization and government thereof.

[Approved April 1, 1878; 1877-8, 883. Superseded by act of 1895, 221.

CORPORATIONS.

Act allowing corporation to act as surety: See ante, title Bonds.

Cemetery corporations: See ante, title Cemeteries.

An act to provide for the payment of the wages of mechanics and laborers employed by corporations.

[Approved March 31, 1891; Stats. 1891, 195.]

§ 1. Wages paid monthly.
§ 2. Nonpayment, rights on.

Section 1. Every corporation doing business in this state shall pay the mechanics and laborers employed by it the wages earned by and due them weekly or monthly, on such day in each week or month as shall be selected by said corporation.

Sec. 2. A violation of the provisions of section one of this act shall entitle each of the said mechanics and laborers to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages or to enforce said lien, the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property.

Declared unconstitutional in Slocum v. Bear Valley Irrigation Co., 122 Cal. 555.

An act requiring every corporation doing business in this state to pay their employees, and each of them, at least once in each and every month, the wages earned by such employee; to limit the defenses which may be set up by such corporation to assignments of wages, set-off or counterclaim, or the absence of such employee at the time of making payment, and in case of such absence the wages are payable upon demand; to prohibit assignments of wages for the purpose of evading the provisions of this act and agreements to accept wages at longer periods than as herein provided as a condition of employment; to fix a penalty for this violation of the provisions of this act by such corporation, and to provide for the disposition of any fines recovered from corporations violating the same.

[Approved March 29, 1897; Stats. 1897, p. 231.]

See note under sec. 8.

§ 1. Corporation must pay wages monthly.
§ 2. Lien in case of failure.
§ 3. Defenses.
§ 4. Assignment of wages.
§ 5. Agreement as to wages.
§ 6. In what money wages payable.
§ 7. Penalty.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Every corporation doing business in this state shall pay, at least once a month, each and every employee employed by such corporation, in transacting or carrying on its business, or in the performance of labor for it, the wages earned by such employee during the preceding month; provided, however, that if at the time of payment any employee shall be absent, or not engaged in his usual employment, he shall be entitled to said payment at any time thereafter upon demand.

Sec. 2. A violation of any of the provisions of section one of this act shall entitle each of the said employees to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages, or to enforce said lien, the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the court, and which shall form part of the judgment in said action, and shall also be entitled to an attachment against said property. An unrecorded deed shall be no defense to such actions.

Sec. 3. That on the trial of any action against such corporation for a violation of the provisions of this act, such corporation shall not be allowed to set up any defense for a failure to pay monthly any employee engaged in transacting or carrying on its business the wages earned by such employee during the preceding month, other than the fact that such wages were not earned, except a valid assignment of such wages, a setoff or counterclaim against the same, or the absence of such employee from his usual employment at the time of the payment of the wages so earned by him.

Sec. 4. No assignment of future wages, payable monthly under the provisions of this act, shall be made to the corporation from which such wages are or may become due, to any person, on behalf of such corporation, for the purpose of evading the provisions of this act, and all such assignments are hereby declared to be invalid.

Sec. 5. No corporation shall require, and no employee of such corporation shall make, any agreement to accept wages at longer periods than as provided in this act as a condition of employment.

Sec. 6. All wages earned by any employee engaged in the service of any corporation in this state shall be paid in lawful moneys of the United States, or in checks negotiable at face value on demand.

Sec. 7. Any corporation violating any of the provisions of this act shall be subject to a fine not exceeding one hundred dollars, or less than fifty dollars, for each violation, the same to be imposed by any court in this state having jurisdiction of offenses in which the penalty does not exceed a fine of one hundred dollars; said fine to be paid by the judge or magistrate before whom a recovery may be had under the provisions of this act, into the general fund of the treasury of the county in which said conviction may be had.

Sec. 8. This act shall take effect and be in force from and after the first day of April, eighteen hundred and ninety-seven.

Declared unconstitutional in Johnson v. Goodyear M. Co., 127 Cal. 4.

An act authorizing certain corporations to act as executor and in other capacities, and to provide for and regulate the administration of trusts by such corporations.

[Approved April 6, 1891; Stats. 1891, p. 490. Amended 1897, 424; 1903, p. 244; 1905, 232.]

§ 1. What corporations may act as executor.
§ 2. Deposits made with corporation.
§ 3. Public administrator may make deposits.
§ 4. Court may order deposit and reduce bonds.
§ 5. Responsible for investments.
§ 6. Interest.
§ 7. Deposit of bonds with state treasurer.
§ 8. May mortgage real estate.
§ 9. Deposit, increase, and decrease of.
§ 10. Abstracts of title.
§ 11. Certificate of authority.
§ 12. Semi-annual statement.
§ 13. Verification of statement.
§ 14. Duty of bank commissioners.
§ 15. No section.
§ 16. Administering oaths and examining witnesses.
§ 17. Duty when corporation violates law.
§ 18. False statement revokes authority.
§ 19. Retirement from business.
§ 20. Conflicting acts repealed.
§ 21. Time of taking effect.
§ 22. Communications confidential.
§ 23. Word "trust." Use prohibited, when.

Section 1. Any corporation which has or shall be incorporated under the general incorporation laws of this state, authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depositary, or trustee, and having a paid-up capital of not less than two hundred and fifty thousand dollars, of which one hundred thousand dollars shall have been actually paid in, in cash, may be appointed to act in such capacity in like manner as individuals. In all cases in which it is required that an executor, administrator, guardian, assignee, receiver, depositary, or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath shall be taken and subscribed or such affidavit made by the president or secretary or manager thereof, and such officer shall be liable for the failure of such corporation to perform any of the duties required by law to be performed by individuals acting in like capacity and subject to like penalties; and such corporation shall be liable for such failure to the full amount of its capital stock; provided any such appointment as guardian shall apply to the estate only, and not to the person. Such corporations shall be entitled to and shall be allowed proper compensation for all the services performed by them under the foregoing provisions of this act; but such compensation shall not exceed that allowed to natural persons for like services.

Sec. 2. Any court, having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depositary, or trustee, upon the application of such officer or trustee, or upon the application of any person having an interest in the estate administered by such officer or trustee, after notice to the other parties in interest, as the court may direct, and after a hearing upon such application, may order such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, and until the further order of said court, with any such corporation, and upon deposit of such money and its receipt and acceptance by such corporation the said officer or trustee shall be discharged from further care or responsibility therefor. Such deposits shall be paid out only upon the orders of said court.

Sec. 3. And it shall be lawful for any public administrator to deposit with any such corporation doing business in the county or city and county, in which he is acting as such administrator any and all moneys of any estate upon which he is administering, not required for the current expenses of the administration. Any such deposits shall relieve the public administrator from depositing with the county treasurer the moneys so deposited with such corporation. Moneys deposited by a public administrator may be drawn upon the order of such administrator, countersigned by a judge of a superior court, when required for the purpose of administration or otherwise.

Sec. 4. Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any executor, administrator, guardian, assignee, receiver, depositary, or trustee, the bond required by law of such officer shall seem burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest, as the court shall direct, and after a hearing on such application, the said court may order the said officer or trustee to deposit with any such corporation, for safekeeping, such portion or all of the personal assets of said estate as it shall deem proper; and thereupon said court shall, by an order of record, reduce the bond to be given or theretofore given by such officer or trustees, so as to cover only the estate remaining in the hands of said officer or trustee; and the property as deposited shall thereupon be held by said corporation, under the orders and directions of said court. Any court having jurisdiction of an estate being administered by a public administrator may direct such public administrator to deposit all or any part of the moneys of the estate not required for the current expenses of the administration, with any such corporation doing business in the county or city and county where such public administrator is acting.

Sec. 5. Such corporations shall not be required to give any bond or security in case of any appointment hereinbefore provided for, except as hereinafter provided, but shall be responsible for all investments which shall be made by it of the funds which may be intrusted to it for investment by such court, and shall be further liable as

natural persons in like positions now are, and as hereinafter provided. The amount of money which any such corporation shall have on deposit at any time shall not exceed ten times the amount of its paid-up capital and surplus, and its outstanding loans shall not at any time exceed said amount.

Sec. 6. Such corporations shall pay interest upon all moneys held by them by virtue of this act, at such rate as may be agreed upon at the time of its acceptance of any such appointment, or as shall be provided by the order of the court.

Sec. 7. Each corporation, before accepting any such appointment or deposit, shall deposit with the treasurer of state, for the benefit of the creditors of said corporation, the sum of one hundred thousand dollars ($100,000.00), in bonds of the United States, or municipal bonds of this state, or of any county, or city, or school district thereof, or in mortgages on improved and productive real estate in this state, being first liens thereon, and the real estate being worth at least twice the amount loaned thereon, The bonds and securities so deposited may be exchanged from time to time for other securities, receivable as aforesaid. Said bonds of the United States, or municipal bonds of this state, or of any county, city, or school district thereof, to be registered in the name of said treasurer, officially, and all said securities to be subject to sale and transfer, and to the disposal of the proceeds by said treasurer, only on the order of a court of competent jurisdiction, and as hereinafter provided. [Amendment approved April 1, 1897; Stats. 1897, 424.]

Sec. 8. Any such corporation, having a paid-up capital in excess of two hundred and fifty thousand dollars, may be permitted by the board of bank commissioners to mortgage any improved and productive real estate owned by it, in excess of said amount, to the treasurer of state, for such sum as the said board may determine; and such mortgage may be deposited with said treasurer, and, when so deposited, it shall be included in the amount of securities, hereinabove required to be deposited with said treasurer for the benefit of the creditors of said corporation.

Sec. 9. So long as the corporation so depositing shall continue solvent, such corporation shall be permitted to

receive from said treasurer the interest or dividends on said deposit; provided, however, that when it shall appear to the board of bank commissioners, from the semi-annual report of any such corporation, that the value of the personal property and cash held and possessed by such corporation, by virtue of the provisions of this act and any amendment thereof, exceeds ten times the amount of the deposit aforesaid, said board shall require said corporation to forthwith increase its said deposit to the sum of five hundred thousand dollars in such securities. And whenever it shall appear to said board that the amount of personal property and cash so held by any such corporation has been reduced below ten times the value of its original deposit above provided for, and said corporation is not in any default in its duties and obligations hereunder, they shall allow such corporation to reduce its said deposit to the sum of two hundred thousand dollars, by the withdrawal of such additional deposit, until such time as an increase in its holdings shall again require an additional deposit, as hereinbefore provided.

Sec. 10. When any part of such deposit is made in bonds and mortgages, it shall be accompanied by full abstracts of titles and searches, and shall be examined and approved by or under the direction of the said board. The fees for an examination of title by counsel, to be paid by the corporation making the deposit, shall not exceed twenty dollars for each mortgage, and the fee for each appraiser, not exceeding two, besides expenses, shall be five dollars for each mortgage.

Sec. 11. It shall not be lawful for any such corporation to accept any trust or deposit, as hereinbefore provided, after the passage of this act without first procuring from the board of bank commissioners a certificate of authority, stating that such corporation has complied with the requirements of this act in respect to such deposit.

Sec. 12. Such corporation shall file with the said board of bank commissioners, during the months of January and July of each year, a statement, under oath, of the condition of such corporation at the close of business on the thirty-first day of December and the thirtieth day of June, respectively, next preceding, showing its financial condition. Also, a list and brief description of the trusts

held by such corporation, the source of the appointment thereto, and the amount of real and personal estate held by such corporation by virtue thereof, except that mere mortgage trusts, wherein no action has been taken by such corporation, shall not be included in such statement. The said statement shall also be in such form, and contain such reports, returns, and information, as to the affairs, business, condition, and resources of the corporation, as the said board may from time to time prescribe and require.

Sec. 13. Such statement shall be verified by the affidavit of one of the managing officers and two of the directors or trustees of such corporation, who shall also state in such affidavit that they have examined the assets and books of such corporation for the purpose of making such statement. Any false swearing in regard to such statement shall be deemed perjury, and shall be subject to the punishment prescribed by law for such offense.

Sec. 14. The said board of bank commissioners are hereby authorized and empowered to address any inquiries to any such corporation, or the officers thereof, in relation to its doings and conditions, or any other matter connected with its affairs; and it shall be the duty of any such corporation or person so addressed to promptly reply, in writing, to such inquiries; and they may also require reports from any such corporation at any time they may deem desirable. It shall be the duty of one or more of the bank commissioners, as designated by the commissioners, annually, or as often as in their judgment they may deem it necessary, without previous notice, to visit and to make personal examination of the solvency of any such corporation, its ability to fulfill all its obligations, and report its condition to the attorney general as soon as may be after such examination.

Sec. 16. Such commissioners shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person, for the purpose of examination, by summons, subpoena, or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in courts of record in this state; and all books and papers which may be deemed necessary to examine by the commissioners shall be pro-

duced, and their production may be compelled in like manner.

Sec. 17. Whenever it shall appear to the board of bank commissioners, from any such examination or report, that any such corporation has committed any violation of law, or is conducting its business in an unsafe or unauthorized manner, they shall, by an order under their hands, direct the discontinuance of such illegal and unsafe or unauthorized practice, and strict conformity with the requirements of the law, and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make any such report as hereinbefore required or to comply with any such order as aforesaid, or whenever it shall appear to the said board that it is unsafe or inexpedient for any such corporation to continue to transact business, they shall communicate the facts to the attorney general, who shall thereupon institute such proceedings against the corporation as the nature of the case may require.

Sec. 18. If the board of bank commissioners shall at any time have satisfactory evidence that any semi-annual statement or other report required or authorized by this act, made or to be made by any officer or officers of such corporation, is false, it shall be the duty of the said board to immediately revoke the certificate of authority granted on behalf of such corporation and mail a copy of such revocation to said corporation and to the clerk of every court of record in this state. Such revocation shall not be set aside until satisfactory evidence shall be given to said board of bank commissioners that such corporation is in substance and in fact in the condition set forth in such statement or report, and that all the requirements of this act have been complied with. Such revocation shall be sufficient cause for the removal of such corporation from any appointment held by it under the provisions of this act.

Sec. 19. Any corporation which desires to retire from business under this act shall furnish to the board of bank commissioners satisfactory evidence of its release and discharge from all the obligations and trusts hereinbefore provided for; whereupon they shall revoke their certificate to such corporation and thereupon the treasurer of state shall return to said corporation all its securities.

Sec. 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its passage.

Sec. 22. Any corporation exercising the powers and performing the duties provided for in said act, shall keep

inviolate all communications confidentially made to it touching the existence, condition, management, and administration of any trusts confided to it; and no creditor or stockholder of any such corporation shall be entitled to disclosure of any such communication; provided, however, that the president, manager and secretary of such corporation shall be entitled to knowledge of such communication; and provided further, that in any suit or proceeding touching the existence, condition, management or administration of such trust, the court wherein the same is pending may require disclosure of any such communication. [New section approved March 20, 1903; Stats. 1903, p. 244. In effect on passage.]

Sec. 23. The use of the word "trust" in combination or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate" is hereby prohibited to all persons, firms, associations, companies or corporations, other than corporations provided for by a certain act of the legislature entitled: "An act authorizing certain corporations to act as executor and in other capacities and to provide for and regulate the administration of trusts by such corporations," approved April 6, 1891, and any person, firm, association, company or corporation which used the word "trust" in combination with or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization" or "syndicate" as the name under which business is done or transacted, shall be subject to the provisions of the act last referred to and to the supervision of the bank commissioners as required by the said act. Any person, firm, association, company or corporation making use of the word "trust" in combination or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate" in the manner hereinabove mentioned in the transaction of business and not subject to the provisions of said act and the supervision of the bank commissioners as in said act provided shall forfeit for each day the offense is committed, the sum of one hundred dollars to be recovered by the bank commissioners of the state of California in the manner provided by law.

[New section; Stats. 1905, 232.]

An act to protect stockholders and persons dealing with corporations in this state.

[Approved March 29, 1878; 1877-8, 695; Am'd. 1905, 786.]

Frauds and misrepresentations, penalty for.

Section 1. Any superintendent, director, secretary, man-

ager, agent, or other officer of any corporation formed or existing under the laws of this state, or transacting business in the same, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent, or other officer, who shall willfully subscribe, sign, indorse, verify, or otherwise assent to the publication, either generally or privately, to the stockholders or other persons dealing with such corporation, or its stock, any untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value, or less apparent or market value, than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison or a county jail not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

Sec. 2. All acts or parts of acts in conflict with this act are hereby repealed.

An act to authorize corporations to own and improve the lots and houses in which their business is carried on.

[Approved April 1, 1876; 1875-6, 653.]

May hold lot, etc.

Section 1. By unanimous consent of its members or stockholders, any corporation existing under the laws of this state may acquire and hold the lot, and house in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

Sec. 2. This act shall take effect immediately.

Superseded by Civil Code, sec. 363.

An act to provide the manner of execution of deeds by cemetery corporations.

[Approved March 26, 1895; Stats. 1895, 75.]

The people o the state of California, represented in senate and assembly, do enact as follows:

Section 1. All deeds or conveyances executed by cemetery associations or incorporations within this state, shall be executed in the name of the corporation or association,

under the seal thereof, by the president, or vice-president, and secretary thereof.

Sec. 2. All acts and parts of acts in conflict with this statute, in so far as they conflict with the same, are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

An act in relation to foreign corporations.

[Approved April 1, 1872; Stats. 1871-2, 826. Amended 1899, 111.]

Section 1. Every corporation heretofore created by the laws of any other state or foreign country, and doing business in this state, shall within ninety days after the passage of this act, and any corporation hereafter created by the laws of any other state or foreign country and doing business in this state, within forty days from the time of commencing to do business in this state, designate some person residing in this state, upon whom process issued by authority by or under any law of this state, may be served, and within the time aforesaid shall file such designation in the office of the secretary of state, and a copy of such designation, duly certified to by the secretary of state, shall be sufficient evidence of such appointment and of the due incorporation of such corporation, and it shall be lawful to serve on such person so designated, or in event that no such person is so designated, then on the secretary of state, any process issued as aforesaid. Such service shall be made on such person so designated or the secretary of state, in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed a valid service thereof on such corporation. [Amendment approved March 17, 1899; Stats. 1899, 111.]

Sec. 2. Every corporation created by the laws of any other state or foreign country which shall fail to comply with the provisions of section one of this act shall be denied the benefit of the laws of this state limiting the time for the commencement of civil actions, and shall not maintain or defend any action or proceeding in any court of this state until such corporation shall have complied with the provisions of section one of this act; and in any action or proceeding instituted against a body styled as a corporation and created by the laws of any other state or foreign country, evidence that such body has acted as a corporation or employed methods usually employed by cor-

porations, shall be received by the court in such action or proceeding for the purpose of proving the existence of such corporation; the sufficiency of such evidence shall be determined by the court before whom such action or proceeding is pending with like effect as in other cases; provided, nevertheless, that any corporation which shall have complied with the requirements of section one of the act of which this is amendatory, shall not be required to make or file any further designation of the person upon whom process may be served, but such former designation shall be deemed and taken to be a full compliance with the requirements of this act; provided further, however, that if any such corporation shall withdraw such designation heretofore made, or if the person designated shall die, or remove from the state, then, and in that case such corporation shall within forty days after such withdrawal make a new designation, or be subject to the provisions and penalties of this act. [Amendment approved March 17, 1899; Stats. 1899, 111.]

Sec. 3. Every corporation created by the laws of any other state or foreign country which shall comply with the provisions of section one of this act shall be entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions. [Amendment approved March 17, 1899; Stats. 1899, 111.]

An act requiring corporations organized under the laws of another state, territory, or foreign country, to file a certified copy of their articles of incorporation in the office of the secretary of state, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located and also where such corporation owns property, and requiring such corporation to pay to the secretary of state the same fees as are paid by corporations formed under the laws of the state of California, and providing for a penalty for the violation of the provisions of this act.

[Approved March 8, 1901, p. 108.]

§ 1. Foreign corporations must file certified copies of articles.
§ 2. Fees.
§ 3. Penalty for failure to comply.

Foreign corporations must file certified copies of articles.

Section 1. Corporations organized under the laws of another state, territory, or of a foreign country, which are

now doing business in this state, or which shall hereafter enter this state to do business, or maintain an office in his state, shall file in the office of the secretary of state of the state of California a certified copy of their articles of incorporation, or of their charters or of the statutes or legislative or executive or governmental act creating them in cases where they are created by charters or statutes or legislative or executive or governmental acts, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located and also where such corporation owns property.

Fees.

Sec. 2. For filing and issuing certified copy as required in section one of this act, corporations formed under the laws of another state, or of a territory, or of a foreign country, shall pay the same fees as are paid by corporations formed under the laws of this state.

Penalty for failure to comply.

Sec. 3. Every foreign corporation amenable to the provisions of this act which shall neglect or fail, within ninety days from the date of passage of this act, to comply with the conditions of the same as herein provided shall be subject to a fine of not less than five hundred dollars, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal business, or the attorney general of the state, or both, as soon as practicable, to institute proceedings to recover the fine herein provided for, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state; in addition to which penalty, no foreign corporation as above defined which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, until it has complied with this act; provided, that any corporation described in section one of this act, which is now doing business in this state, and which has complied with the act in relation to foreign corporations, approved April

first, eighteen hundred and seventy-two, and an act amendatory thereof, approved March seventeenth, eighteen hundred and ninety-nine, is exempted from the provisions of this act.

Sec. 4. This act shall take effect and be in force from and after the date of its passage.

DEEDS.

An act relating to conveyances of real estate.

[Approved March 11, 1874; 1873-4, 345.]

§ 1. Conveyances by persons whose names are changed.
§ 2. Record of conveyances made by public officers.
§ 3. Indexing conveyances.

Conveyances by persons whose names are changed.

Section 1. Any person in whom the title of real estate is vested who shall afterwards, from any cause, have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate.

Record of conveyances made by public officers.

Sec. 2. All conveyances of real estate, except patents issued by the state as a party, made by any public officer pursuant to any law of this state, shall, when recorded by the county recorder, be by him alphabetically indexed in the "index of grantors," both in the name of the officer making such sale and in the name of the person owning the property so sold.

Indexing of such conveyances.

Sec. 3. It is hereby made the duty of all county recorders to alphabetically index in the "index of grantors," both in the name by which title was acquired and also by which the same was conveyed, all conveyances referred to in section one of this act.

Sec. 4. This act shall be in force from and after its passage.

FIRE PATROL.

An act to confer certain powers upon corporations, organized for the purpose of discovering and preventing fires, and of saving property and human life from conflagration.

[Approved April 1, 1876; 1875-6, 689. Amended 1897, 223.]

§ 1. Power to equip and employ men as fire patrol.
§ 2. Privileges granted to corps.
§ 3. Costs and expenses of organization.

Power to equip and employ men as fire patrol.

Section 1. Any corporation of underwriters heretofore organized and now existing or which may be hereafter organized under the laws of this state, for the purpose of discovering and preventing fires and of saving property and human life from conflagration, and doing business within any municipal corporation of this state, shall have power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it shall be, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, power and authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof shall deem to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire; provided, however, that nothing in this act shall be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; and provided further, that no act of such corps shall justify any owner of any building or property in abandoning such building or property.

Privileges granted to fire patrol corps.

Sec. 2. Such corporation, with its officers and corps, when running to a fire, shall, with its horses, vehicles, and salvage apparatus, have the same right of way as is or may be bestowed by any ordinance of the municipality

or law of this state upon the regular fire department of the municipality wherein such corporation is acting; provided, that the rights of such fire department shall always be paramount to the rights of said corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, shall be equally applicable to any person or persons willfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who shall willfully or carelessly injure any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department.

Costs and expenses of organization.

Sec. 3. In the month of July, eighteen hundred and ninety-seven, and in the month of July in every year thereafter, there shall be held a meeting of all corporations heretofore created, or that may be hereafter created, under this act, of which ten days' previous notice shall be inserted in at least one daily newspaper published in the municipality where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented at such meeting, and shall be entitled to one vote. A majority of the whole number so represented shall have power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created, under this act, and fixing the maximum amount of expenses which shall be incurred therefor during the fiscal year next to ensue, which

amount shall in no case exceed two per centum of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of premiums returned, as received by each, as hereinafter provided, and such assessment shall be collectible, by and in the name of said corporation, in any court of law in the state of California having jurisdiction, in such manner and at such time or times as said corporation may determine. In order to provide for the payment of persons employed by said corporation, and to maintain suitable rooms, and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished semi-annually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement shall be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting or effecting such insurance in said municipality, and shall be handed to the secretary of said corporation heretofore created or hereafter to be created under the provision of this act within ten days after the first day of July and the first day of January of each year. Said secretary shall, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or persons engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent or person within said municipality, and every officer of such insurance company, corporation, association, and every such underwriter, agent or person who shall, for fifteen days after said demand, neglect to render the state-

ment herein provided for, shall forfeit fifty dollars for the use of said corporation, and he shall also forfeit for its use twenty-five dollars in addition for every day he shall so neglect after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof. The penalty herein provided for may be sued for and collected, with costs, in any court of law within the state of California having jurisdiction, by and in the name of said corporation. [Amendment approved March 29, 1897; Stats. 1897, p. 223.]

GUARDIANS.

Act providing for appointment of guardians of children in orphan asylums: See post, title Infancy.

HOMESTEADS.

An act to enable certain parties therein named to alienate or encumber homesteads.

[Approved March 25, 1874; 1873-4, 582.]

§ 1. Alienation of.
§ 2. Notice of application.
§ 3. Petition.
§ 4. Order and effect.
§ 5. Fees.

Alienation of homestead.

Section 1. In case of a homestead, if either the husband or wife shall become hopelessly insane, upon application of the husband or wife, not insane, to the probate court of the county in which said homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead.

Notice of application.

Sec. 2. Notice of the application for such order shall be given by publication of the same, in a newspaper pub-

lished in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice shall also be served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there be no such male relative known to the applicant, a copy of such notice shall be served upon the public administrator of the county in which such homestead is situated; and it is hereby made the duty of such public administrator, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Petition.

Sec. 3. Thirty days before the hearing of any application under the provisions of this act, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned in the first section of this act, subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Order and effect.

Sec. 4. If the court shall make the order provided for in the first section of this act, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage, in fee simple.

Fees.

Sec. 5. For all services rendered by any public administrator under the provisions of this act he shall be allowed a fee not exceeding twenty dollars, to be fixed by the court,

and the same shall be taxed as costs against the person making application for the order herein provided for.

Sec. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its passage.

An act supplementary to an act entitled "An act to authorize the formation of corporations to provide the members thereof with homesteads, or lots of land suitable for homesteads," approved May twentieth, eighteen hundred and sixty-one.

[Approved March 23, 1874; 1873-4, 525.]

§ 1. Extension of time for homestead corporations.
§ 2. How existence continued.

Extension of time for homestead corporations.

Section 1. Any corporation formed under the act to which this act is supplemental, whose period of existence is not stated in its articles of incorporation to be ten years, may continue its corporate existence for ten years from the date of filing its articles of incorporation, upon complying with the provisions of this act.

How existence continued.

Sec. 2. Any such corporation existing on the first day of January, eighteen hundred and seventy-four, may, at any time before its period of existence, as stated in its articles of incorporation, shall expire, continue its existence, as stated in section one of this act, by a majority vote of its board of trustees at any meeting of such board, or by a vote of a majority of the stockholders, as the board of trustees may elect. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must

be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this act, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed by the act of which this is supplementary.

Sec. 3. This act shall take effect from and after its passage.

INFANCY.

An act to regulate the hours of labor and employment of minors.

[Approved February 8, 1889; 1889, 4.]

§ 1. Employment of minors.
§ 2. Age of minor to be recorded.
§ 3. Notice of hours of labor to be posted.
§ 4. Violation and penalty.
§ 5. Duty of commissioner.

Employment of minors.

Section 1. No minor under the age of eighteen shall be employed in laboring in any manufacturing, mechanical, or mercantile establishment, or other place of labor, more than ten hours in one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed sixty hours in a week.

Age of minor to be recorded.

Sec. 2. No child under ten years of age shall be employed in any factory, workshop, or mercantile establishment; and every minor under sixteen years of age when so employed shall be recorded by name in a book kept for the purpose, and a certificate (duly verified by his or her parent or guardian, or if the minor shall have no parent or guardian, then by such minor, stating age and place of birth of such minor) shall be kept on file by the employer, which book and which certificate shall be produced by him or his agent at the requirement of the commissioner of the bureau of labor statistics.

Notice of hours of labor to be posted.

Sec. 3. Every person or corporation employing minors

under sixteen years of age in any manufacturing establishment shall post, and keep posted, in a conspicuous place in every room where such help is employed, a printed notice stating the number of hours per day for each day of the week required of such persons, and in every room where minors under sixteen years of age are employed, a list of their names, with their ages.

Violation and penalty.

Sec. 4. Any person or corporation that knowingly violates or omits to comply with any of the foregoing provisions of this act, or who knowingly employs, or suffers or permits any minor to be employed, in violation thereof, shall, on conviction, be punished by a fine of not less than fifty nor more than two hundred dollars for each and every offense.

Duty of commissioner.

Sec. 5. It shall be the duty of the commissioner of the bureau of labor statistics to enforce the provisions of this act.

Sec. 6. This act shall take effect and be in force from and after its passage.

This act is probably superseded by the following act:

An act to regulate the employment, hours of labor, etc., of children, and to prohibit the employment of minors under a certain age.

[Approved March 23, 1901; 1901, p. 631.]

§ 1. Hours of labor of children.
§ 2. Under twelve must not be employed.
§ 3. Notice to be posted, what must contain.
§ 4. Penalty for violation.

Hours of labor for children.

Section 1. No minor under the age of eighteen shall be employed in laboring in any manufacturing, mechanical or mercantile establishment, or other place of labor, more than nine hours in one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of

making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-four hours in a week.

Under twelve years must not be employed.

Sec. 2. No child under twelve years of age shall be employed in any factory, workshop or mercantile establishment, and every minor under sixteen years of age when so employed shall be recorded by name in a book kept for the purpose, and a certificate (duly verified by his or her parent or guardian, or if the minor shall have no parent or guardian, then by such minor, stating age and place of birth of such minor) shall be kept on file by the employer, which book and which certificate shall be produced by him or his agent at the requirement of the commissioner of the bureau of labor statistics.

Notice to be posted, what must contain.

Sec. 3. Every person or corporation employing minors under sixteen years of age in any manufacturing establishment, shall post and keep posted in a conspicuous place in every room where such help is employed, a printed notice stating the number of hours per day for each day of the week required of such persons, and in every room where minors under sixteen years of age are employed, a list of their names, with their ages.

Penalty for violation.

Sec. 4. Any person or corporation that knowingly violates or omits to comply with any of the foregoing provisions of this act, or who knowingly employs, or suffers or permits any minor to be employed, in violation thereof, shall, on conviction, be punished by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment of not more than sixty days, or by both such fine and imprisonment, for each and every offense.

Sec. 5. This act shall take effect sixty days after its passage.

An act to provide for the appointment of guardians of children maintained in any orphans' home or orphan asylum in this state.

[Approved March 23, 1893; Stats. 1893, 203.]

Section 1. When any orphan or half-orphan has been maintained in any orphans' asylum or orphans' home in

the state of California for more than one year, the managers of said home or asylum shall be entitled to the guardianship of such child in preference to any other person; provided, however, that such managers shall not be appointed guardian of a minor child over fourteen years of age without its consent, nor shall this act preclude the court of competent jurisdiction from inquiring into the fitness of such managers for the guardianship of such children; but in exercising the power of the court to appoint guardians for minors, the managers of the home having the care of such child for more than one year shall, if there be no special reasons to the contrary in any particular case, be preferred in the guardianship of the person of the child to the parent so leaving the child, without good cause therefor being shown, under the care of said home for the said time.

Sec. 2. This act shall take effect immediately.

Statute prohibiting use of child for exhibitions, immoral purposes, soliciting alms, etc.: See Penal Code, Appendix, title Infancy.

Begging by minor to be restrained: See Penal Code, Appendix, title Infancy.

Act for incorporation of societies for prevention of cruelty to children: See Penal Code, Appendix, title Infancy.

Minors not to enter saloon: See Penal Code, Appendix, title Infancy.

Act to prevent sale of intoxicants to minor: See Penal Code, Appendix, title Intoxicating Liquors.

Child not to be confined with adult charged with crime: See Penal Code, Appendix, title Infancy.

INSURANCE.

Fire patrol: See ante, p. 715.

An act relating to life, health, accident, and annuity or endowment insurance on the assessment plan, and the conduct of the business of such insurance.

[Approved March 19, 1891; Stats. 1891, p. 126.]

§ 1. Construction of contract.
§ 2. Formation of corporation—Deposit—Certificate.
§ 3. Reincorporation.
§ 4. Contracts—Liens—Payments.

§ 5. Reserve Fund—Investments.
§ 6. Requirements from foreign corporations—License.
§ 7. Limitations as to age—Certificate—False statements.
§ 8. Exemption from attachment.
§ 9. Annual statement.
§ 10. Duty of commissioner.
§ 11. Lapses—Notice of assessment.
§ 12. Fees.
§ 13. Expenses of prosecution.
§ 14. No application to secret societies.

Section 1. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons holding similar contracts shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

Sec. 2. Corporations may be formed under the general laws of this state to carry on the business of mutual insurance upon the assessment plan, and shall be subject only to the provisions of this act. No such corporations shall issue contracts of insurance until at least two hundred (200) persons have applied in writing for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand ($5,000) dollars. This sum shall be invested in bonds or securities, approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest. Said bonds, or securities, or evidences of such deposit, shall be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum shall be held in trust for the contract holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation shall also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this act; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor shall the commissioner approve any

name or title so closely resembling another as to mislead the public. No corporation formed hereunder shall have legal existence after one year from the date of its articles, unless its organization has been completed and business commenced; nor shall any corporation or individual solicit, or cause to be solicited, any business, until such corporation shall have complied with the provisions of section six hundred and thirty-three of the Political Code of this state.

Sec. 3. Any existing corporation engaged in transacting the business of life, health, accident, or endowment insurance on the assessment plan, may reincorporate under the provisions of the Civil Code of this state, and under the provisions of this act; provided, that it shall not be obligatory upon such corporation to reincorporate; and any such existing corporation may continue to exercise all rights, powers, and privileges conferred by this act, the same as if incorporated hereunder.

Sec. 4. The contracts of insurance issued by such corporation shall specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments will be made. Unless the contract shall have been invalidated by fraud or by breach of its conditions, the corporation shall be obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness shall be a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, of final judgment, unless waiver is made by the beneficiary, shall constitute a forfeiture of the right to do business.

Sec. 5. Every domestic corporation organized or doing business under this act shall accumulate a reserve or emergency fund, which shall at all times be not less than the largest benefit contracted to be paid by it to any one person. Every existing domestic corporation must accumulate such fund within one year from the date when this act takes effect, and any corporation organized hereunder, within one year from the date of its certificate of incorporation. Such fund, to the extent of the largest

amount contracted to be paid by any such corporation to any one person, shall be so invested and deposited, as provided in section two hereof, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section two of this act shall constitute a part of the reserve required by this section, at the option of such corporation. When any corporation doing business hereunder shall discontinue business, this fund shall be returned to such corporation, or so disposed of as may be determined by the superior court of the county or city and county in which is its principal place of business.

Sec. 6. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom shall bind the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner shall thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the insurance commissioner, by publication

in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this act, like license, fees, taxes, or penalties shall be imposed upon corporations of the same kind and their agents of such state or country doing business in this state.

Sec. 7. No corporation doing business under this act (except accident or casualty corporations) shall issue a contract of insurance upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less) such application shall be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, and showing the applicant to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employee, examining physician, or other person making a false or fraudulent statement to any corporation doing business under this act, with reference to any application for insurance or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court; and any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract holder in procuring the payment of a benefit named in the contract, shall be guilty of perjury, and may be proceeded against and punished as provided by the statute of this state in relation to the crime of perjury.

Sec. 8. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the con-

tracts issued by any corporation doing business under this act shall not be liable to attachment or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract holder or any beneficiary named thereunder.

Sec. 9. Every domestic and foreign corporation doing business under this act shall annually, on or before the first day of February, file with the insurance commissioner, in such form as he shall prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business or claiming to do business under this act, at any time, in his discretion, and shall make such examination at least once a year.

Sec. 10. If the insurance commissioner, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this act, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot within three months from the date of notice of default pay its obligations, he shall cite the president, secretary, manager, or general agent of said corporation, or all of them, to appear before him (stating the time and place), to show cause why the authority of such corporation to do business shall not be revoked; and if they cannot show cause, then he shall report the facts to the attorney general of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

Sec. 11. No policy or certificate issued by any corporation or association doing business under the provisions of this act shall lapse or be lapsed for the nonpayment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice shall be mailed at least fifteen days before the assessment is due (provided, that such corporations doing

business under this act as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices), and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, shall constitute conclusive evidence of the mailing of such notice.

Sec. 12. The fees for filing statements, certificates, or other documents required by this act, or for any service or act of the insurance commissioner, and the penalties for any violation of this act, shall, except as otherwise provided herein, be the same as provided in the laws of this state relating to life insurance companies, and shall be disposed of as provided by such laws.

Sec. 13. And for all lawful expenses under this act, or by reason of any of its provisions, in the prosecution of any suit or proceedings, or otherwise, for the enforcement of the provisions of this act, the insurance commissioner must present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who must allow the same, and direct payment thereof be made, and the state controller shall draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, in addition to the ordinary contingent expense, which warrants shall be payable out of the general fund.

Sec. 14. The provisions of this act shall not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, nor to any mutual or benefit association, organized or formed and composed only of members of any such society, lodge, or council exclusively.

Sec. 15. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 16. This act shall take effect immediately.

An act to provide for the incorporation of mutual insurance companies, for the insurance of life and health, and against accidents.

[Approved April 2, 1866; 1865-6, 752. Amended 1867-8, 330, 661; 1880, 229.]

§ 8. Capital stock.
§ 9. Return of guarantee notes.
§ 10. Impaired capital—Assessment.

This act was incorporated in the Civil Code; it was amended in 1880 as follows:

Capital stock.

Sec. 8. Every company formed or existing under this act shall have a capital stock of not less than one hundred thousand dollars. It shall not make any insurance nor transact any business until its capital stock shall have been fully paid up in cash. The board of directors of the company, or a committee of the directors appointed by the board, shall, without delay, after organizing, proceed to obtain the subscriptions required to complete the capital stock of the company, and in obtaining such subscription, or any subscriptions to capital stock afterward authorized, must open books therefor, giving public notice thereof, if deemed necessary by them in some newspaper of general circulation in the county in which the principal office of the company is located; such books shall, in either case, be kept open until the amount of capital stock required shall have been subscribed. If more than the requisite amount is subscribed, the stock shall be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors, or the committee thereof, or by either, as to the whole or any part thereof, and shall be, so far as rejected, without effect. [Amendment approved April 26, 1880; 1880, 229 (Ban. ed. 552). Took effect from passage; affects only corporations formed before 1873.]

Return of guarantee notes.

Sec. 9. Any corporation formed or existing under this act may, at any time, return to the makers, their assigns or heirs, the guarantee notes held by said corporation; and from and after such return, or the offer thereof, made in good faith, the corporation shall not be subject to any

of the obligations or burdens imposed by section ten of said act upon said corporation and in favor of the makers of such notes. [Amendment approved April 26, 1880; 1880, 230 (Ban. ed. 523). Took effect from passage; affects only corporations formed before 1873.]

Impaired capital—Assessment.

Sec. 10. Whenever, at any time, the capital of any corporation formed or existing under this act shall become impaired, it shall be the duty of the board of directors at once to levy such an assessment upon the capital stock, whether paid up or not, as may be necessary to make good such impairment; and such assessment, except as to the amount thereof, shall be levied and collected in the manner prescribed by sections three hundred and thirty-one to three hundred and forty-nine, inclusive, of the Civil Code of this state. Every such corporation may increase or diminish its capital stock in the mode and manner prescribed by section three hundred and fifty-nine of said Civil Code. [Amendment approved April 26, 1880; 1880, 230 (Ban. ed. 523). Took effect from passage; affects only corporations formed before 1873.]

The act of April 26, 1880, from which the foregoing three amendments were taken, contained the following additional section:

Construction of act.

Sec. 4. Nothing in this act shall be construed to affect any corporation formed after twelve o'clock noon on the day upon which the Civil Code of California took effect, nor shall anything in this act be construed to revive or put in force any part of the act of which it is amendatory, beyond what was intended should be in force by the provisions of section two hundred and eighty-eight of the Civil Code of California.

An act to provide for the organization and management of county fire insurance companies.

[Approved April 1, 1897; Stats. 1897, p. 439.]

§ 1. Incorporation of.
§ 2. Articles of incorporation—Certificate.
§ 3. Directors.
§ 4. Officers.
§ 5. Bonds.

§ 6. Powers—By-laws.
§ 7. Membership.
§ 8. Risks.
§ 9. Classifying risks.
§ 10. Property outside of county.
§ 11. Losses.
§ 12. Idem—Assessments.
§ 13. Notice of assessments.
§ 14. Action for neglect or refusal to pay assessment.
§ 15. Annual statement.
§ 16. Withdrawal.
§ 17. Report of officers.
§ 18. Dissolution.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Any number of persons not less than twenty-five, residing in any county in this state, owning insurable property aggregating not less than fifty thousand dollars in value, which they desire to have insured, may incorporate for the purpose of mutual insurance against loss or damage by fire.

Sec. 2. Such persons shall file with the insurance commissioner a declaration of their intention to incorporate for the purposes expressed in section one of this act, which declaration shall be signed by all of the incorporators, and shall contain a copy of the articles of incorporation proposed to be adopted. The insurance commissioner shall examine the proposed articles of incorporation, and, if they conform to this act, he shall deliver to such persons a certificate permitting them to incorporate as such insurance company. Such certificate shall be directed to the clerk of the county in which such corporation is proposed to be organized, and shall contain a copy of the proposed articles of incorporation. Upon filing with the secretary of state, the certified copies of the duly executed articles of incorporation, as required by section two hundred and ninety of the Civil Code of the state of California, and of the certificate above provided for, the secretary of state shall thereupon issue a certificate of incorporation to such county insurance company, and, upon organizing under such articles of incorporation, such county fire insurance company may carry on a fire insurance business as hereinafter provided. The articles of incorporation and the charter or certificate obtained by any county fire insurance company operating under the provisions of this act, shall be subject to the control and modification by the legisla-

ture of the state of California. The by-laws and all amendments thereto shall be filed with the insurance commissioner within sixty (60) days after their adoption.

Sec. 3. The number of directors shall not be less than (7) seven, nor more than eleven (11), a majority of whom shall constitute a quorum to do business. These directors shall be elected from the members of the association by ballot, and shall hold office for one year, or until their successors are elected and qualified. The annual meeting of the members of the company shall be on the second Monday in January of each year. In the election of the first board of directors each member shall be entitled to one vote. At every subsequent election, every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for every risk or risks he holds in the company, and he may cast the same in person or by proxy, distributing them among the directors to be elected, or among a less number of directors, or cumulating them upon one candidate, as he shall see fit.

Sec. 4. The directors shall elect, from their own number, a president and a vice-president, and shall also elect a treasurer and a secretary, who may or may not be members of the company. All of such officers hold their office for one year from the date of their election, and until their successors are elected and qualified.

Sec. 5. The treasurer and secretary shall give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

Sec. 6. Such corporation and its directors shall possess the usual powers, and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution and the laws of this state, as may be deemed necessary for the management of its affairs, in accordance with the provisions of this act. Also to prescribe the duties of its officers and to fix their compensation, and to alter and amend its by-laws, when necessary.

Sec. 7. Any person owning property in the county for which any such company is formed may become a member of such company by insuring therein, and shall be entitled

to all the rights and privileges appertaining thereto, and no person not residing in the county in which the company is formed shall become a director of such company.

Sec. 8. Such company may issue policies only on detached dwellings, schoolhouses, churches, barns (except livery barn and hotel barns), and other farm buildings, and such property as may be contained therein; also, other property on the premises owned by the insured; hay and grain in stack or in the field, and livestock on the premises of the insured, anywhere in the county, for any time not exceeding five years, and not to extend beyond the time limited for the existence of the charter, and for an amount not to exceed four thousand five hundred dollars on any one risk; provided, that no company which has been organized more than six months shall write insurance subject to one fire exceeding three per cent of the amount at risk upon the books of such company. All persons so insured shall give their obligation to the company, binding themselves, their heirs and assigns, to pay their pro rata share to the company of the necessary expense and of loss by fire which may be sustained by any member thereof during the time for which their respective policies are written, and they shall also at the time of effecting the insurance pay such a percentage in cash, and such other charges, as may be required by the rules or by-laws of the company.

Sec. 9. All such companies must classify the property insured therein at the time of issuing policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire loss which may be attached to the several kinds of property insured.

Sec. 10. No such company shall insure any property beyond the limits of the county within which the company is organized, nor shall any company issue policies of insurance on any property within the limits of any city containing over six thousand inhabitants at the time of the organization of such company; provided, that no dwelling shall be insured within the corporate limits of any city or town exposed by any other building within one hundred feet, or by any other risk other than a dwelling or private barn, within two hundred feet of the risk assumed; provided, that the amount of insurance shall not exceed

seventy-five per cent of the value of the property and that no additional insurance shall be allowed.

Sec. 11. Every member of such company who may sustain loss or damage by fire shall immediately notify the president, or in his absence, the secretary thereof, stating the amount of damages or loss sustained or claimed, and if not more than two hundred dollars, then the president and secretary shall proceed to ascertain the amount of such loss or damage, and adjust the same If the claim for damage or loss be an amount greater than two hundred dollars, then the president of such company, or in his absence, the vice-president, or in the absence of both, the secretary thereof, shall forthwith convene the board of directors of such company, whose duty it shall be when convened to appoint a committee, of not less than three disinterested members of such company, to ascertain the amount of such damage or loss. If in either case there is a failure of the parties to agree upon the amount of such damage or loss, they shall submit the question of the amount of such loss to arbitration. The president of the company shall appoint one disinterested person to act as an arbitrator, and no claimant or insured shall appoint another, and if such two arbitrators fail to agree upon the amount of such loss, then they shall select a third disinterested person to act with them. Such arbitrators so appointed shall have full authority to examine witnesses, and to do all other things necessary to the proper determination of the amount of loss sustained by the claimant, and shall make their award in writing to the president of such company, and such award so as aforesaid made shall be final as to the amount of the loss sustained.

The pay of the said committee shall be three ($3.00) dollars per day for each day's services so rendered, and five cents for each mile necessarily traveled in the discharge of their duties, which shall be paid by the claimant, unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case such expense shall be paid by the company.

Sec. 12. When the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all

the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified.

Sec. 13. It shall be the duty of the secretary, whenever such an assessment shall have been made, to immediately notify every person holding a risk in such company, personally, by an agent, or by letter directed to his usual post-office address, of the amount of such loss, and the sum due from him, as his share thereof, and of the time and to whom such payment is to be made; but such time shall not be less than thirty days, nor more than ninety days, from the date of such notice.

Sec. 14. An action may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this act, or other liabilities due the company, and the directors of any company so formed who shall willfully refuse or neglect to perform the duties imposed upon them by law or by the by-laws of the company, shall be liable in their individual capacity to the person sustaining such loss. An action may also be brought and maintained against any such company by members thereof for losses sustained if payment is withheld after the amount of such losses have been determined, and is due by the terms of the policy.

Sec. 15. It shall be the duty of the secretary to prepare an annual statement showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

Sec. 16. Any member of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the organization continues the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his share of all claims that may exist against such company; provided, that the company shall have power to cancel or terminate any policy by giving the insured five days' written notice to that effect, and returning to him any excess of premium he may have paid during the term of the policy, over the cost of his insurance, as measured by the rates of standard fire insurance companies doing business in this state.

Sec. 17. It shall be the duty of the president and secretary, within thirty days after the first day of January in

each year, to prepare, under their own oath, and transmit to the insurance commissioner, a statement of the condition of the company on the last day of the month next preceding the annual meeting. If, upon examination, the insurance commissioner finds that such company is doing business correctly, in accordance with the provisions of this act, he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business during the ensuing year, subject, however, to the provisions of this act. For such examination and certificate the company shall pay one dollar. Each company shall pay, at the time of organization, five dollars to the insurance commissioner, for all services which he shall render in the matter of organization.

Sec. 18. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this state.

Sec. 19. All acts and parts of acts in conflict with this act are hereby repealed.

IRRIGATION.

Laws relating to: See General Laws, title Irrigation.

LIENS.

Servant's lien, where wages not paid: See ante, title Corporations.

An act creating a lien in favor of owners or those in charge of stallions, jacks, and bulls used for propagating purposes, and providing for the operation of such lien.

[Approved March 11, 1891; Stats. 1891, p. 90.]

§ 1. Claim to be filed—False representations.
§ 2. Suits to foreclose.
§ 3. Attachment.
§ 4. Duty of sheriff.
§ 5. Sections of Code of Civil Procedure.

Section 1. Any owner or person having in charge a stallion, jack, or bull used for propagating purposes, shall

have a lien for the agreed price for the service of such stallion, jack, or bull upon any mare or cow served for pay by any such stallion, jack, or bull, and upon the offspring of such service; provided, that the owner or person having in charge such stallion, jack, or bull shall, within ninety days after such service, file in the office of the county recorder of the county where such mare or cow is served or kept, a verified claim containing a particular description of the mare or cow so served, the date and place of serving, the name of the owner or reputed owner of the mare or cow so served, a proper description, by name or otherwise, of the stallion or jack or bull performing such service, the name of the owner or person in charge thereof, and the amount of the lien claimed, which claim, when filed as aforesaid, shall operate as notice to subsequent purchasers and encumbrancers of such mare or cow for the term of one year from the date of the filing of such claim; and, provided, that any willfully false representations concerning the breeding or pedigree of such stallion, jack, or bull made or published by the owner or person in charge of such stallion, jack, or bull, or by any one else at the request or instigation of such owner or person in charge, shall invalidate any lien claimed under or by virtue of the provisions of this act.

Sec. 2. Suit to foreclose any lien created hereunder may be brought in any county where said mare, cow, or offspring from such service may be found, and the plaintiff, at the time of issuing summons, or at any time afterwards prior to the rendition of judgment therein, may have the mare or cow upon which said lien subsists, and the said offspring, attached as further security for the payment of any judgment he may recover, unless the defendant or person in possession of such mare, cow, or offspring give him good and sufficient security to pay such judgment, in which event the mare, cow, or offspring shall be forthwith discharged by the sheriff from such attachment, and from the lien hereunder created.

Sec. 3. The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing—

First.—That the defendant is indebted to the plaintiff upon a demand for services rendered by the stallion, jack, or bull, belonging to or under charge of plaintiff, upon the mare or cow of defendant, for which his claim has been duly filed, in accordance with section one of this act.

Second.—That the sum for which the attachment is asked is an actual, bona fide existing debt, due and owning from the defendant to the plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the defendant.

Sec. 4. The writ must be directed to the sheriff of the county in which suit is brought, and must require him to attach the mare or cow specified in such lien, and the offspring of such service, unless the defendant or person in possession of such mare, cow, or offspring give good and sufficient security as provided in this act, in which case, to take such security and discharge any attachment he may have made, and to deliver up such mare, cow, or offspring to defendant, or to the person from whom he has taken the same, who shall receive the same free from the lien upon which such suit is brought.

Sec. 5. Sections five hundred and thirty-nine, eleven hundred and eighty-nine, eleven hundred and ninety-eight, and eleven hundred and ninety-nine of the Code of Civil Procedure are hereby made applicable to this act.

Sec. 6. This act shall take effect from and after its passage.

An act giving a lien to loggers and laborers, employed in logging camps, upon the logs cut and hauled by the persons who employ them.

[Approved March 30, 1878; 1877-8, 747. Amended 1880, 38; 1887, 53.]

§ 1. Labor with logs, lien upon.
§ 2. Lien to cease, how and when.
§ 3. Suits to be commenced in proper courts.
§ 4. Plaintiff to have lumber attached.
§ 5. Clerk to issue writ.
§ 6. Sheriff to attach logs.
§ 7. Sections made applicable.
§ 8. Attachment, how made.
§ 9. Where lien shall extend.

Labor with logs, lien upon.

Section 1. A person who labors at cutting, hauling, rafting, or driving logs or lumber, or who performs any labor in or about a logging camp necessary for the getting out

or transportation of logs or lumber, shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims to continue for thirty days after the logs or lumber arrive at the place of destination, for sale or manufacture, except as hereinafter provided. [Amendment approved April 12, 1880; 1880, 38 (Ban. ed. 191). Took effect from passage.]

Lien to cease, how and when.

Sec. 2. The lien hereby created shall cease and determine unless the claimant thereof shall, within twenty days from the time such labor shall have been completed, file and record in the office of the county recorder of the county where such labor was performed a verified claim, containing a statement:

1. Of his demand, after deducting all just credits and offsets;

2. The time within which such labor was done;

3. The name of the person or persons for which the same was done;

4. The place where the logs or timber upon which such lien is claimed are believed to be situated, and the marks upon the same;

5. The reputed owner thereof; and,

6. The reputed owner of the land from which the same were cut and hauled.

Suits to be commenced in proper courts.

Sec. 3. All liens hereby provided for shall cease and determine unless suit to foreclose the same shall be commenced in the proper court within twenty-five days from the time the same are filed. [Amendment approved April 12, 1880; Amendments 1880, 39 (Ban. ed. 191). Took effect from passage.]

Plaintiff to have lumber attached.

Sec. 4. The plaintiff in any such suit, at the time of issuing the summons, or at any time afterward, may have the logs or timber upon which such lien subsists attached, as further security for the payment of any judgment he may recover, unless defendant give him good and sufficient security to pay such judgment, in which event such logs shall be forthwith discharged by the sheriff from such attachment, and from the lien hereby created.

Clerk to issue writ.

Sec. 5. The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing:

1. That defendant is indebted to the plaintiff upon a demand for labor, for which his claim has been duly filed in accordance with section two of this act;

2. That the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor or creditors of the defendant.

Sheriff to attach logs.

Sec. 6. The writ must be directed to the sheriff of the county, and must require him to attach and safely keep the logs and timber specified in such lien, or so much thereof as may be sufficient to satisfy plaintiff's demand, unless the defendant give good and sufficient security, as provided in this act, in which case, to take such security and discharge any attachment he may have made, and to deliver up such logs to the defendant, who shall receive the same free from the lien upon which such suit is brought.

Sections made applicable.

Sec. 7. Sections five hundred and thirty-nine, eleven hundred and eighty-nine, eleven hundred and ninety-five, eleven hundred and ninety-seven, eleven hundred and ninety-eight, and eleven hundred and ninety-nine of the Code of Civil Procedure are hereby made applicable to this act. [Amendment approved March 8, 1887; Stats. 1887, p. 53.]

Attachment, how made.

Sec. 8. Such attachment shall be made by taking such logs into possession, and the sheriff shall make an inventory and return of his proceedings as directed in chapter IV, title VII, of the Code of Civil Procedure.

Where lien shall extend.

Sec. 9. The lien provided for by this act, shall in no case extend beyond the limits of the county in which the logs or timber in controversy were cut.

Sec. 10. This act shall take effect and be in force from and after its passage.

An act to secure the wages of persons employed as laborers on threshing-machines.

[Approved March 12, 1885; 1885, 109.]

Section 1. Every person performing work or labor of any kind in, with, about, or upon any threshing-machine, the engine, horse-power, wagons, or appurtenances thereof, while engaged in threshing, shall have a lien upon the same to the extent of the value of his services.

Sec. 2. The lien herein given shall extend for ten days after the person has ceased such work or labor.

Sec. 3. If judgment shall be recovered in any action to recover for said services for work or labor performed, and said property shall be sold, the proceeds of such sale shall be distributed pro rata to all judgment creditors who have, within ten days, begun suits to recover judgments for the amount due them for such work.

Sec. 4. The lien shall expire unless a suit to recover the amount of the claim is brought within ten days after the party ceases work.

LODGING-HOUSES.

An act concerning lodging-houses and sleeping apartments within the limits of incorporated cities.

[Approved April 3, 1876; 1875-6, 759.]

§ 1. Number of cubic feet.
§ 2. Misdemeanor.
§ 3. Buildings excepted.

Number of cubic feet for each person.

Section 1. Every person who owns, leases, lets, or hires, to any person, or persons, any room or appartment in any building, house, or other structure within the limits of any incorporated city, or city and county, within the state of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space, in the clear, for each per-

son so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine or imprisonment.

Misdemeanor.

Sec. 2. Any person or persons found sleeping or lodging, or who hires or uses for the purpose of sleeping in or lodging in any room or apartment which contains less than five hundred (500) cubic feet of space, in the clear, for each person so occupying such room or appartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment.

Buildings excepted.

Sec. 3. It shall be the duty of the chief of police (or such other person to whom the police powers of a city are delegated) to detail a competent and qualified officer or officers of the regular force to examine into any violation of any of the provisions of this act, and to arrest any person guilty of any such violation.

Sec. 4. The provisions of this act shall not be construed to apply to hospitals, jails, prisons, insane asylums, or other public institutions.

Sec. 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its passage.

MASTER AND SERVANT.

An act to provide for a lunch hour for laborers in sawmills, shake-mills, shingle-mills, and logging-camps.

[Approved February 28, 1901, p. 75.]

Lunch hour for laborers in lumber camps and mills.

Section 1. Every person, corporation, co-partnership, or company operating a sawmill, shake-mill, shingle-mill, or

logging-camp, in the state of California, shall allow to his or its employees, workmen, and laborers a period of not less than one hour at noon for the midday meal.

Sec. 2. Any person, corporation, co-partnership, or company, his or its agents, servants, or managers, violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars nor less than one hundred dollars for each violation of the provisions of this act.

Sec. 3. This act shall take effect and be in force on the first day of April, nineteen hundred and one.

MECHANICS' INSTITUTES: See ante, title Chambers of Commerce.

MINES AND MINING.

An act for the protection of miners.

[Approved March 16, 1872; Stats. 1871-72, p. 413.]

§ 1. Protection of miners.
§ 2. Escape shaft.
§ 3. Liabilities. Damages.

Section 1. It shall not be lawful for any corporation, association, owner, or owners of any quartz-mining claims within the state of California, where such corporation, association, owner, or owners employ twelve men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the surface of three hundred feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than one hundred feet from the surface.

Sec. 2. It shall be the duty of each corporation, association, owner, or owners of any quartz mine or mines in this state, where it becomes necessary to work such mines beyond the depty of three hundred feet, and where the number of men employed therein daily shall be twelve or more, to proceed to sink another shaft or construct a

tunnel so as to connect with the main working shaft of such mine as a mode of escape from underground accident or otherwise. And all corporations, associations, owner, or owners of mines as aforesaid, working at a greater depth than three hundred feet, not having any other mode of egress than from the main shaft, shall proceed as herein provided.

Sec. 3. When any corporation, association, owner, or owners of any quartz mine in this state, shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any miner working therein shall be hurt or injured and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner, or owners of the mine where the injuries shall have occurred shall be liable to person injured in all damages that may accrue by reason thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, approved April twenty-sixth, eighteen hundred and sixty-two.

Sec. 4. This act shall take effect and be in force six months from and after its passage.

An act supplemental to an act entitled "An act concerning corporations," passed the twenty-second of April one thousand eight hundred and fifty.

[Approved March 21, 1872; 1871-2, 443. Amended 1875-6, 730.]

See note under sec. 7.

§ 1. Petition for removal of officers.
§ 2. Organization of meeting.
§ 3. Ballot to supply vacancies.
§ 4. Certificate of election.
§ 5. Fees of county clerk.

Petition for removal of officers.

Section 1. On petition of the majority of the shareholders of any corporation formed for the purpose of mining to the county judge of the county where said corporation has its principal place of business, verified by the signers, to the effect that they are severally the holders on the books of the company of the number of shares set opposite their signatures to the foregoing petition, the county judge shall issue his notice to the shareholders of said company that a meeting of the shareholders will be held, stating the time, not less than five or more than ten days after the first publication of such notice, and the place of meeting within said county, and the object to be to take into consideration the removal of officers of said company; which notice, signed by the said county judge, shall be published daily in one or more daily newspapers published in said county for at least five days before the time for the meeting.

Organization of meeting.

Sec. 2. At the time and place appointed by said notice, those claiming to be shareholders who shall assemble shall proceed to organize by the appointment of a chairman and secretary, and thereupon those claiming to be shareholders shall present proof thereof, and only those showing a right to vote shall take part in the further proceedings. If it appears that at the time appointed, or within one hour thereafter, shareholders of less than one-half the shares are present, no further proceedings shall be had; but the meetng shall be ipso facto dissolved; provided, however, that by a vote of the holders of the majority of the capital stock of the corporations aforesaid the board of trustees may be required to furnish to the meeting a written detailed statement and account of the affairs, business, and property of the corporation; but if the holders of a majority of the shares are present, they shall proceed to vote, the secretary calling the roll, and the members voting yea or no, as the case may be. The secretary shall enter the same upon his list, and when he has added up the list and stated the result, he shall sign the same and hand it to the chairman, who shall sign the same and declare the result. [Amendment approved April 1, 1876; Amendments 1875-6, 730. Took effect from passage.]

Ballot to supply vacancies.

Sec. 3. If the result of the vote is that the holders of a majority of all the shares of the company are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the chairman, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and having stated the result of the count in writing, shall sign the same and hand it to the chairman, who shall announce the result of the meeting.

Certificate of election.

Sec. 4. A report of the proceedings of the meeting shall be made in writing, signed by the chairman and secretary, and verified by them, and delivered to the county judge, who shall thereupon issue to each person chosen a certificate of his election, and shall also issue an order requiring that all books, papers, and all property and effects be immediately delivered to the officers elect; and the petition and report, indorsed with the date and fact of the issuance of such certificate and order, shall be delivered to the county clerk, to be by him filed in his office, and thereafter the persons thus elected officers shall be the duly elected officers, and hold office until the next regular annual meeting, unless removed under the provisions hereof.

Fees of county clerk.

Sec. 5. For all services in these proceedings the county clerk shall receive ten dollars on the issuance of the notice and ten dollars on the issuance of the certificates.

Sec. 6. All acts or parts of acts conflicting with this act are hereby repealed.

Sec. 7. This act shall take effect immediately.

Declared unconstitutional in Chollar etc. Co. v. Wilson, 66 Cal. 374.

An act for the better protection of the stockholders in corporations formed under the laws of the state of California for the purpose of carrying on and conducting the business of mining.

[Approved March 30, 1874; 1873-4, 866. Amended 1880, 134; 1897, 38.]

§ 1. Books—Keeping open to inspection—Posting monthly balances.
§ 2. Examination of grounds.
§ 3. Penalty.

Books of mining corporations.

Section 1. It shall be the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers shall, at all times during business hours, be open to the inspection of any bona fide stockholder; and if any stockholder shall at any time so request, it shall be the duty of the secretary to attend at the office of said company at least one hour in the day out of regular business hours, and exhibit such books and papers of the company as such stockholder may desire, who shall be entitled to be accompanied by an expert; and he shall also be entitled to make copies or extracts from any such books or papers. Any stockholder, may at reasonable hours, have permission to examine such mining property, and he shall be entitled to be accompanied by an expert to examine such property, to take samples, and to make such other examination as he may deem necessary. It shall be the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and for what and to whom such disbursements or payments were made, and for what object or purpose the same were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance

sheet shall be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company. It shall be the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account shall also contain a cerified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each one. He shall attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It shall also be his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent shall be kept in some conspicuous place in the office of said company, and to be open to the inspection of all stockholders; provided, that this section shall apply only to mining corporations whose stock is listed and offered for sale at public exchange, and shall not apply to mining corporations whose stock is not listed in the public exchange, and is not offered for public sale. [Amended February 26, 1897; Stats. 1897, p. 38.]

Examination of grounds.

Sec. 2. Any bona fide stockholder of a corporation formed under the laws of this state for the purpose of mining, shall be entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit to make such visit and examination; and when such stockholder shall make application to the president of such corporation, he shall immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said

mine or mines as the party named in said order may desire to visit and examine. It shall be the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein; it shall be his duty also to accompany said stockholder, either in person or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. In case of the failure or refusal of the superintendent to obey such order, such stockholder shall be entitled to recover in any court of competent jurisdiction, against said corporation, the sum of one thousand dollars, and traveling expenses to and from said mine as liquidated damages, together with costs of suit. In case of such refusal, it shall be the duty of the directors of such corporation forthwith to remove the officer so refusing, and thereafter he shall not be employed, directly or indirectly, by such corporation, and no salary shall be paid to him. [Amendment approved April 23 1880; Amendments 1880, 135 (Ban. ed. 400). Took effect from passage; repealed conflicting acts.]

Penalty.

Sec. 3. In case of the refusal or neglect of the president to cause to be issued by the secretary the order in the second section of this act mentioned, such stockholder shall be entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section. In case of the failure of the directors to have the reports and accounts current made and posted as in the first section of this act provided, they shall be liable, either severally or jointly, to an action by any stockholder in any court of competent jurisdiction complaining thereof, and on proof of such refusal or failure, such complaining stockholder shall recover judgment for actual damages sustained by him, with costs of suit. And each of such defaulting directors shall also be liable to removal for such neglect. [Amended February 26, 1897; Stats. 1897, p. 40.]

Sec. 4. All acts in conflict with the provisions of this act are hereby repealed.

An act for the further protection of stockholders in mining companies.

[Approved April 23, 1880; 1880, 131 (Ban. ed. 398). Amended 1897, 96.]

§ 1. Sale or mortgage of property.
§ 2. Stock to be in name of real owner.
§ 3. Books, when to close—Stock, how voted.

Directors not to sell, etc., unless two-thirds of capital stock consent.

Section 1. It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise depose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain in any way (except by location) any additional mining ground, unless such act be ratified by the holders of at least two-thirds of the stock of such corporation then outstanding. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution, duly passed at any regularly called stockholders' meeting. The certificate of the secretary of any mining corporation reciting such ratification at a stockholders' meeting, or the names of stockholders with the amount of stock held by each, and the total stock outstanding, signed and acknowledged by him in the manner provided for acknowledgments to conveyances of real property, may be attached to or indorsed upon any deed, mortgage, conveyance, or other instrument, made under this act and recorded with such deed, conveyance, or other instrument, and the recitals contained in such certificate, or the duly recorded copy thereof, are made prima facie evidence of their truthfulness for all purposes whatsoever; provided, that no one except a stockholder in any such corporation, shall be permitted to urge any objection to the acquisition of any additional ground or other property by such corporation. [Amendment approved March 9, 1897; Stats. 1897, p. 96.]

Stock to be in name of real owner or trustee.

Sec. 2. All stock in each and every mining corporation in this state shall stand in the books of said company, in all cases, in the names of the real owners of such stock, or in the name of the trustees of such real owners;

but in every case where such stock shall stand in the name of a trustee, the party for whom he holds such stock in trust shall be designated upon said books, and also in the body of the certificate of such stock.

Books, when to close—Stock, how voted.

Sec. 3. It shall not be lawful for any such corporation, or the secretary thereof, to close the books of said

C. C., 1906, p. 752-753.

STATUTES OF CALIFORNIA, 1905, p. 74

An act to repeal an act entitled "An act for the further protection of stockholders in mining companies", approved April 23, 1880, and the act amendatory thereof, approved March 9, 1897, relating to the protection of stockholders in mining companies.

(Approved March 7, 1905.)

The people of the State of California represented in senate and assembly, do enact as follows:

Repealed.

Section 1. An act entitled "An act for the further protection of stockholders in mining companies", approved April twenty-third, eighteen hundred and eighty, and an act entitled "An act to amend section 1 of an act entitled 'An act for the further protection of stockholders in mining companies', approved April 23, 1880", approved March ninth, eighteen hundred and ninety-seven, are hereby repealed.

Sec. 2. This act shall take effect immediately.

chises in municipalities, and relative to granting of franchises.

[Approved March 23, 1893; Stats. 1893, p. 288. Amended 1897, 176. Consult in connection with this act the acts of 1897, p. 135, and 1901, p. 265.]

Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate rail-

An act for the further protection of stockholders in mining companies.

[Approved April 23, 1880; 1880, 131 (Ban. ed. 398). Amended 1897, 96.]

§ 1. Sale or mortgage of property.
§ 2. Stock to be in name of real owner

[illegible]

96.]

Stock to be in name of real owner or trustee.

Sec. 2. All stock in each and every mining corporation in this state shall stand in the books of said company, in all cases, in the names of the real owners of such stock, or in the name of the trustees of such real owners;

but in every case where such stock shall stand in the name of a trustee, the party for whom he holds such stock in trust shall be designated upon said books, and also in the body of the certificate of such stock.

Books, when to close—Stock, how voted.

Sec. 3. It shall not be lawful for any such corporation, or the secretary thereof, to close the books of said corporation more than two days prior to the day of any election. At such election the stock of said corporation shall be voted by the bona fide owners thereof, as shown by the books of said corporation, unless the certificate of stock, duly indorsed, be produced at such election, in which case said certificates shall be deemed the highest evidence of ownership, and the holder thereof shall be entitled to vote the same.

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 5. This act shall take effect from and after its passage.

NUISANCES.

See act authorizing district attorneys to abate public nuisances, passed March 15, 1899; Stats. 1899, 103.

ORPHANS.

See ante, title Infancy.

RAILROADS.

[Consult an act approved March 22, 1899; Stats. 1899, p. 183, requiring railroads to equip cars with fenders and brakes.]

An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises.

[Approved March 23, 1893; Stats. 1893, p. 288. Amended 1897, 176. Consult in connection with this act the acts of 1897, p. 135, and 1901, p. 265.]

Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate rail-

roads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the board of supervisors, or other governing or legislative body of any county or district within this state, except renewals of franchises or privileges for wharves, chutes, or piers, in counties outside of the limits of incorporated cities or towns, shall be granted upon the conditions in this act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such board of supervisors or other governing or legislative body, together with a statement that it is proposed to grant the same must first be advertised in one or more daily newspapers in the county or district wherein the said franchise or privilege is to be exercised. If there be no daily newspaper published in the district wherein the said franchise or privilege is to be exercised, then the publication must be made in some other daily newspaper of the county, and if there be no daily newspaper published in the county wherein the said franchise or privilege is to be exercised, then the publication must be made in a daily newspaper published in an adjoining county. Such advertisements must continue every day for at least ten days, and must commence at least thirty days before any further action of the board of supervisors or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the term of its continuance, and, if a street railroad, the route to be traversed, and the day on which tenders will be received for the same. On the day so stated, the board or other governing or legislative body herein mentioned, must meet in open session and read the tenders. The franchise or privileges must then be awarded to the highest bidder; provided, however, that nothing in this section shall affect a special privilege granted for a shorter term than two years. [Amendment approved March 19, 1897; Stats. 1897, p. 176.]

Sec. 2. Any member of any board of supervisors, common council, or other governing or legislative body of any county, city and county, city, town, or district of this state, who, by his vote, violates or attempts to violate the provisions of this act or any of them, shall be guilty of

a misdemeanor and of malfeasance in office, and be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

Sec. 3. This act shall take effect immediately.

An act providing for the sale of street railroad and other franchises in municipalities, and providing conditions for the granting of such franchises by the legislative or other governing bodies, and repealing conflicting acts.

[Approved March 13, 1897, p. 135.]

See the following act, also the note under sec. 4 of this act.

§ 1. Sale of franchises.
§ 2. Extension of existing franchises.
§ 3. Misdemeanor.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street railroads, upon any public street or highway, to lay gas or water pipes, to erect poles or wires for transmitting electric power, or for lighting purposes, along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the board of supervisors, board of trustees, common council, or other governing or legislative body of any city and county, city, or town within this state, except steam railroads, telegraph lines, and renewal of franchises for piers, chutes, and wharves, shall be granted upon the conditions in this act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such board of supervisors, board of trustees, common council, or other governing, or legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more newspapers of the city and county, city, or town, wherein the said franchise or privilege is to be exercised. Such advertisement must state that bids will be received for such franchise, and that it will be awarded to the highest bidder, and such advertisement must be published in such daily newspaper once

a day for ten successive days, and if there be no daily newspaper published in such county, city and county, or city, then it shall be published in a weekly newspaper published in such county, city and county, or city, once a week for four weeks, and in either case the full advertisement must be completed not less than twenty nor more than thirty days before any further action of the board of supervisors, board of trustees, common council, or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the term of its continuance, and if a street railroad, the route to be traversed; that sealed bids or tenders will be received up to a certain hour on a day named therein, and a further statement that no bids will be received of a single sum or amount stated, but that all bids must be for the payment in lawful money of the United States of a stated per cent of the gross annual receipts of the person, partnership, or corporation, or other authority to whom the franchise is awarded, arising from its use, operation, or possession. No percentage shall be paid for the first five years succeeding the date of the franchise, but thereafter such percentage shall be payable annually, and shall in no case be less than three per cent per annum upon such gross receipts, the franchise to be forfeited by failure to make the payments stated in the bids upon which the award was made; provided, the board of supervisors, board of trustees, common council, or other governing or legislative body may provide as a condition of such franchise that the payments of said percentage shall begin at any time less than five years after the franchise is granted, if such franchise is a renewal, or substantially a renewal, of a franchise already in existence. After the expiration of the time stated in the advertisement up to which sealed bids or proposals will be received, the board or other governing or legislative body herein mentioned, must meet in open session and open and read the tenders or bids. The franchise or privileges must then be award to the highest bidder; provided, however, that nothing in this section shall affect a special privilege, granted for a shorter term than two years; and provided further, that the governing power may reject any or all bids. And provided further, that unless the bidder shall file with his bid a bond to such county, city and county, city, town, or district, with at least two good and sufficient sureties, to be

approved by such board or other governing or legislative body in a penal amount to be by it prescribed and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe, fulfill, and perform each and all of the terms, conditions, and obligations of such franchise, in case the same shall be awarded to him, and that in case of any breach of condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond, no award of any such franchise shall be made upon such bid, although the same may be the highest, but such franchise may be awarded to the next highest bidder, who shall have complied with this proviso, or, in the discretion of such board, or other governing or legislative body, all bids may be set aside and rejected, and new bids advertised for.

Sec. 2. No franchise now existing, or which may hereafter be granted, shall be renewed by the board of supervisors, board of trustees, common council, or other governing or legislative body above described, nor shall the extension or renewal of the same be advertised or offered for sale by such governing or legislative body until within one year prior to the date of the expiration of the existing franchise, unless the existing franchise is first surrendered by the holders thereof; provided, no franchise can be surrendered without the consent of the board of supervisors, board of trustees, common council, or other governing or legislative body of the city and county, city, or town, granting such franchise. And provided further, that on the application of the mayor, or a majority of the board of supervisors, board of trustees, common council, or other governing or legislative body above described, it shall be the duty of the attorney general to sue for a forfeiture of any franchise granted by such governing or legislative body, alleging in such suit noncompliance with the terms of the franchise.

Sec. 3. Any member of any board of supervisors, common council, or other governing or legislative body of any city and county, city, or town, of this state, who, by his vote, violates or attempts to violate the provisions of this act, or any of them, shall be guilty of a misdemeanor

and of malfeasance in office, and be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed.

This act was declared unconstitutional in Pereira v. Wallace, 129 Cal. 397.

See the following act.

An act providing for the sale of street railroad and other franchises in municipalities, and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts.

[Became a law under constitutional provision without governor's approval, March 11, 1901, p. 265. Amended 1903, p. 90.]

The people of the state of California, represented in senate and asembly, do enact as follows:

Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street railroads upon any public street or highway, to lay gaspipes for the purpose of carrying gas for heat and power, to erect poles or wires for transmitting electric heat and power along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by boards of supervisors, boards of trustees, or common councils, or other governing or legislative bodies of any city and county, city or town within this state, except steam railroads and except telegraph or telephone lines doing an interstate business, and renewals of franchises for piers, chutes or wharves, shall be granted upon the conditions in this act provided, and not otherwise.

Sec. 2. An applicant for any franchise or privilege above mentioned shall file with the governing or legislative body of the municipality an application, and thereupon said governing body shall, in its discretion, advertise the fact of said application, together with a statement that it is proposed to grant the same, in one or more newspapers of the city and county, city or town wherein the

said franchise or privilege is to be exercised. Said advertisement must state that bids will be received for such franchise, and that it will be awarded to the highest bidder, and the same must be published in such newspaper once a day for ten successive days, if it be a daily newspaper, and if there be no daily newspaper published in such city and county, city or town, then it shall be published in a weekly newspaper once a week for four successive weeks, and in either case the full publication must be completed not less than twenty nor more than thirty days before any further action can be taken thereon. [Amendment approved March 6, 1903; Stats. 1903, p. 90. In effect immediately.]

Sec. 3. The publication must state the character of the franchise or privilege proposed to be granted, the term for which it is granted, and, if it be a street railroad, the route to be traversed; that sealed bids therefor will be received up to a certain hour and day named therein, and that the successful bidder and his assigns must, during the life of said franchise, pay to the municipality two per cent (2%) of the gross annual receipts of the person, partnership or corporation to whom the franchise is awarded, arising from its use, operation or possession. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually; and in the event said payment is not made, said franchise shall be forfeited; provided further, that if the franchise be a renewal of a right already in existence, the payment of said percentage of gross receipts shall begin at once.

Sec. 4. In case the franchise granted shall be an extension of an existing system of street railroad, then the gross receipts shall be estimated to be one-half of the proportion of the total gross receipts of said system which the mileage of such extension bears to the total mileage of the whole system, and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

Sec. 5. Said advertisement shall also contain a statement that the said franchise will be struck off, sold, and awarded to the person, firm or corporation who shall make the highest cash bid therefor; provided, only, that at the

time of the opening of said bids any responsible person, firm or corporation present or represented may bid on said franchise or privilege a sum not less than ten per cent above the highest sealed bid therefor, and said bid so made may be raised not less than ten per cent by any other responsible bidder, and said bidding may so continue until finally said franchise shall be struck off, sold, and awarded by said governing body to the highest bidder therefor in gold coin of the United States. Each sealed bid shall be accompanied with cash or a certified check, payable to the treasurer of such municipality, for the full amount of said bid, and no sealed bid shall be considered unless said cash or check is inclosed therewith, and the successful bidder shall deposit at least ten per cent of the amount of his bid with the clerk of such municipality before the franchise shall be struck off to him. And if he shall fail to make such deposit immediately, then and in that case, his bid shall not be received, and shall be considered as void, and the said franchise shall then and there be again offered for sale to the bidder who shall make the highest cash bid therefor, subject to the same conditions as to deposit, as above-mentioned. Said procedure shall be had until said franchise is struck off, sold, and awarded to a bidder who shall make the necessary deposit of, at least, ten per cent of the amount of his bid therefor, as herein provided. Said successful bidder shall deposit with the clerk of such municipality, within twenty-four hours after the acceptance of his bid, the remaining ninety per cent of the amount thereof, and in case he or it shall fail to do so, then the said deposit theretofore made shall be forfeited, and the said award of said franchise shall be void, and the said franchise shall then and there, by said governing body, be again offered for sale to the highest bidder therefor, in the same manner, and under the same restriction as hereinbefore provided, and in case said bidder shall fail to deposit with the clerk of such municipality, the remaining ninety per cent of his bid, within twenty-four hours after its acceptance, the award to him of said franchise shall be set aside, and the deposit theretofore made by him shall be forfeited, and no further proceedings for a sale of said franchise shall be had unless the same shall be readvertised and again offered for sale, in the

manner hereinbefore provided. [Amendment approved March 6, 1903; Stats. 1903, p. 90. In effect immediately.]

Sec. 6. Work to erect or lay telegraph or telephone wires, to construct street railways, to lay gaspipes for the purpose of carrying gas for heat and power, to erect poles or wires for transmitting electric heat or power, along or upon any public street or highway, or to exercise any privilege whatever, a franchise for which shall have been granted in accordance with the terms of this act, shall be commenced in good faith within not more than four months from the granting of any such franchise, and if not so commenced within said time said franchise so granted shall be declared forfeited, and shall be completed within not more than three years thereafter, and if not so completed within said time said franchise so granted shall be forfeited; provided, that for good cause shown the governing or legislative body may by resolution extend the time for completion thereof, not exceeding three months.

Sec. 7. The successful bidder for any franchise or privilege struck off, sold, and awarded under this act shall file a bond running to said city and county, or city or town, with, at least, two good and sufficient sureties, to be approved by such governing body, in a penal sum by it to be prescribed, and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe, fulfill, and perform each and every term and condition of such franchise, and that in case of any breach of condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. Said bond shall be filed with such governing body within five days after such franchise is awarded, and upon the filing and approval of such bond, the said franchise shall, by said governing or legislative body, be granted by ordinance to the person, firm, or corporation to whom it has been struck off, sold, or awarded, and in case that said bond shall not be so filed, the award of such franchise shall be set aside, and any money paid therefor shall be forfeited, and said franchise shall, in the discretion of said governing or legislative body, be readvertised, and again offered for sale in the

same manner, and under the same restrictions, as hereinbefore provided. [Amendment approved March 6, 1903; Stats. 1903, p. 91. In effect immediately.]

Sec. 8. It shall be the duty of the attorney general, upon the complaint of any municipality, or, in his discretion, upon the complaint of any taxpayer, to sue for the forfeiture of any franchise granted under the terms of this act, for the noncompliance with any condition thereof.

Sec. 9. No clause or condition of any kind shall be inserted in any franchise or grant offered or sold under the terms of this act, which shall directly or indirectly restrict free and open competition in bidding therefor, and no clause or provision shall be inserted in any franchise offered for sale, which shall in anywise favor one person, firm or corporation, as against another in bidding for the purchase thereof.

Sec. 10. Any member of any common council or other governing or legislative body of any city and county, city or town of this state, who, by his vote, violates or attempts to violate the provisions of this act, or any of them, shall be guilty of a misdemeanor, and may be punished therefor, as provided by law, and may be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

Sec. 11. All acts or parts of acts in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall be construed as repealing or amending the following acts, to wit: "An act relating to the granting by the counties and municipalities of franchise for the construction of paths and roads for the use of bicycles and other horseless vehicles," approved March twenty-seventh, eighteen hundred and ninety-seven; "An act to authorize cities and towns to grant franchises for the construction and maintenance of railroads beyond the limits of such cities or towns leading to public parks owned thereby," being chapter forty [fifty] of the laws of eighteen hundred and ninety-seven of the state of California.

This act shall take effect immediately.

An act to confirm, ratify, and make valid ordinances heretofore passed by the trustees, council, or other body intrusted with the government of any incorporated city, city and county, or town giving authority and permission to propel cars upon railroad tracks laid through the streets and public highways of such incorporated city, city and county, or town, by electricity.

[Approved February 25, 1891; Stats. 1891, p. 12.]

Section 1. In all cases where, prior to the passage of this act, authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, has been obtained for a term of years, not exceeding fifty, from the trustees, council, or other body to whom was intrusted the government of the city, city and county, or town, and permission has been granted by such governing body to propel cars upon such tracks by electricity, such authority and permission shall be, and shall be held and deemed, as valid and legal as the same would have been if, at the time of the obtaining thereof, section four hundred and ninety-seven of the Civil Code had expressly declared that permission might be given to propel cars upon such tracks by electricity, as well as by horses, mules, or wire ropes running under the streets and propelled by stationary steam engines; provided, that all such permissions or franchises heretofore granted shall be subject to the provisions of the laws of this state applicable to street railroads in general, and subject to the same regulations from city, city and county, and town authorities as if the said franchises were hereafter granted.

Sec. 2. This act shall take effect and be in force from and after its passage.

An act to enable railroad companies to complete their railroads.

[Approved April 1, 1878; 1877-8, 944.]

Authorizing construction of railroads.

Section 1. Every railroad company heretofore organized under the laws of this state, and which has completed a

portion of its road prior to the passage of this act, is hereby authorized and empowered to complete its road as described in its articles of incorporation, notwithstanding it may not have begun the construction of its road within two years after filing its original articles of incorporation, and notwithstanding it may not have completed and put in operation five miles of its road each year thereafter.

Sec. 2. This act shall take effect from and after its passage.

An act permitting and authorizing railway and other corporations, organized under the laws of this state, or of any state or territory of the United States of American, or any act of congress of the United States of America, to do business in this state on equal terms.

[Approved April 3, 1880; 1880, 21 (Ban. ed. 114).]

Equal terms for all railway corporations.

Section 1. That every railway corporation, and every corporation organized for the purpose of carrying freights or passengers, which has or may be created or organized under or by virtue of any of the laws of any state or territory of the United States of America, or any act of congress of the United States of America, may hereafter build railways, exercise the right of eminent domain, and do or transact any other business which such corporation might, if the same had been created or organized under or by virtue of the laws of this state, having the same rights, privileges, and immunities, and subject to the same laws, penalties, and obligations, and burdens, as though said corporations had been created by or organized under the laws of the state of California.

Railroad corporations may contract with one another.

Sec. 2. Railroad corporations doing business in this state and organized under any law of this state, or the United States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

Sec. 3. All laws inconsistent with this act are hereby repealed.

An act to provide for the management and operation of railroads above certain elevations.

[Approved February 9, 1897, p. 5.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. All railroads operated in this state whose lines of road are wholly constructed at an elevation of five thousand feet, or more, above the level of the sea, shall only be required to maintain and operate their roads, or to run passenger or freight cars thereon, between the fifteenth day of May, and the fifteenth day of October in each year.

An act to compel railroad corporations, or individuals owning railroads, to operate their roads.

[Approved April 15, 1880; 1880, 43 (Ban. ed. 205).]

Operation of railroads, or forfeiture.

Section 1. From and after the completion of any railroad, or the completion of such portion thereof capable of being operated, it shall be the duty of the corporation, or individual owning the same, to operate it; and upon the failure of said corporation or individual so owning said road to keep the same, or any part thereof, in full operation for the period of six months, its or his right to operate the same in whole or in part, as the case may be, shall be forfeited; and the lands occupied for the purposes of its or his road, so far as the same shall not be operated, shall revert to the original owners, or their successors in interest. A railroad shall be deemed to be in full operation when one passenger train, or one mixed train, is run over it once each day in each direction, and a sufficient number of freight trains to accommodate the traffic on said road.

Prevention of operation.

Sec. 2. This act shall not be construed to apply to a case where the operation of the road is prevented by the act of God, nor to a case where the operation of said road, together with its branch or trunk lines, does not yield

income sufficient to defray the expenses of maintaining and operating the same in connection with its said branch or trunk lines.

Duty of railroad commisioners.

Sec. 3. The railroad commissioners of the state of California shall have the power to examine and determine the question whether said road, together with its said branch and trunk lines, does or does not yield income sufficient to operate the same.

Sec. 4. This act shall take effect immediately.

An act to create the office of commissioner of transportation, and to define its powers and duties; to fix the maximum charges for transporting passengers and freights on certain railroads; and to prevent extortion and unjust discrimination thereon.

[Approved April 1, 1878; 1877-8, 969.]

This act, which repealed the previous act of similar character of April 3, 1876, Stats. 1875 6, 783, was superseded by the operation of the constitution adopted in May, 1879. The following act of 1880 was intended to put the provisions of the constitution in reference to the subject into operation.

An act to organize and define the powers of the board of railroad commissioners.

[Approved April 15, 1880; 1880, 45 (Ban. ed. 207).]

§ 1. Board of railroad commissioners.
§ 2. Salaries—Expenses.
§ 3. Free passes.
§ 4. Duty of attorney general and district attorney.
§ 5. Location of office—Sessions of board.
§ 6. Seal.
§ 7. Powers of board.
§ 8. Powers of officers.
§ 9. Complaints.
§ 10. When may sue.
§ 11. Rates.
§ 12. Jurisdiction.
§ 13. Demands from companies.
§ 14. Definition.
§ 15. Salaries, how paid.

Board of railroad commissioners.

Section 1. The three persons elected railroad commissioners, pursuant to the provisions of section twenty-two

of article twelve of the constitution of this state, constitute, and shall be known and designated as, the "board of railroad commissioners of the state of California." They shall have power to elect one of their number president of said board, to appoint a secretary, to appoint a bailiff, who shall perform the duties of janitor; also, to employ a stenographer, whenever they may deem it expedient.

Salaries—Expenses.

Sec. 2. The salary of each commissioner shall be four thousand dollars per annum; the salary of the secretary shall be twenty-four hundred dollars per annum; the salary of the bailiff shall be twelve hundred dollars per annum, such salaries to be paid by the state of California in the same manner as the salaries of state officers are paid. The stenographer shall receive a reasonable compensation for his services, the amount to be fixed by the state board of examiners, and paid by the state. Said commissioners, and the persons in their official employment when traveling in the performance of their official duties, shall have their traveling expenses other than transportation paid, the amounts to be passed on by the state board of examiners, and paid by the state. Said board of railroad commisioners shall be allowed one hundred dollars per month for office rent, and fifty dollars per month for fuel, lights, postage, expressage, subscription to publications upon the subject of transportation, and other incidental expenses, to be paid by the state; provided, that all moneys remaining unexpended at the expiration of each fiscal year shall be returned to the state treasury. Said board is further authorized to expend not to exceed four hundred dollars for office furniture and fixtures, to be paid by the state. The state shall furnish said board with all necessary stationery and printing, upon requisitions signed by the president of said board.

Free passes.

Sec. 3. Said commissioners, and the persons in their official employment, shall, when in the performance of their official duties, have the right to pass free of charge on all railroads, steamers, ships, vessels, and boats, and on all vehicles employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this state.

Duties of attorney general and district attorney.

Sec. 4. It shall be the duty of the attorney general, and the district attorney in every county, on request of said board, to institute and prosecute, and to appear and to defend for said board, in any and all suits and proceedings which they or either of them shall be requested by said board to institute and prosecute, and to appear in all suits and proceedings to which the board is a party, shall have precedence over all other business except criminal business; provided, that said board shall have the power to employ additional counsel to assist said attorney general, or said district attorney, or otherwise, when in their judgment the exigencies of the case may so require. The fees and expenses of said additional counsel to be determined by the state board of examiners, and paid by the state.

Location of office—Sessions of board.

Sec. 5. The office of said board shall be in the city of San Francisco. Said office shall always be open (legal holidays and nonjudicial days excepted). The board shall hold its sessions at least once a month in said city of San Francisco, and at such other times and such other places within this state as may be expedient. The sessions of said board shall be public, and when held at a place other than the office in the city of San Francisco, notice thereof shall be published once a week for two successive weeks before the commencement of such session, in a newspaper published in the county, where such session is to be held; and if no newspaper is published in such county, then in a newspaper published in an adjacent county. Such publication to be paid by the state in the manner as other publications authorized by law are paid.

Seal.

Sec. 6. The board shall have a seal, to be devised by its members, or a majority thereof. Such seal shall have the following inscription surrounding it: "Railroad commission, state of California." The seal shall be affixed only to, first, writs; second, authentications of a copy of a record or other proceeding, or copy of a document on file in the office of said commission.

Powers of board.

Sec. 7. The process issued by said board shall extend to all parts of the state. The board shall have power to issue writs of summons and of subpoena in like manner as courts of record. The summons shall direct the defendant to appear and answer within fifteen days from the day of service. The necessary process issued by the board may be served in any county in this state by the bailiff of the board, or by any person authorized to serve process of courts of record.

Powers of officers.

Sec. 8. The secretary of said board shall issue all process and notices required to be issued, and do and perform such other duties as the board may prescribe. The bailiff shall preserve order during the sessions of said board, and shall have authority to make arrests for disturbances. He shall also have authority, and it shall be his duty, to serve all process, orders, and notices issued by said boards, when directed by the president, and make return of the same.

Complaints and decisions to be in writing.

Sec. 9. All complaints before said board shall be in writing and under oath. All decisions of said board shall be given in writing, and the grounds of the decisions shall be stated. A record of the proceedings of said board shall be kept, and the evidence of persons appearing before said board shall be preserved.

When may sue.

Sec. 10. Whenever the board shall render any decision within the purview and pursuant to the authority vested in said board by section twenty-two of article twelve of the constitution, said board, or the person, copartnership, company, or corporation making the complaint upon which such decision was rendered, is authorized to sue upon such decision in any court of competent jurisdiction in this state.

Rates.

Sec. 11. Whenever said board, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of passengers and freight, pursuant to the

provisions of the constitution, said board shall serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service, it shall be the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station-houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said board shall also make such further publication thereof as they shall deem proper and necessary for the public good. If the party to be served, as hereinbefore provided, be a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said board, pursuant to the constitution and this act, shall go into force and effect on the twentieth day after service of said schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby, as hereinbefore provided.

Jurisdiction.

Sec. 12. When jurisdiction is, by the constitution, conferred on the board of railroad commissioners, all the means necessary to carry it into effect are also conferred on said board, and when in the exercise of jurisdiction within the purview of the authority conferred on said board by the constitution the course of proceeding be not specifically pointed out, any suitable process or mode of proceeding may be adopted by the board which may appear most conformable to the spirit of the constitution.

Demand from transportation commissioner under act of April 1, 1878.

Sec. 13. The said board shall, immediately, after entering upon the performance of its duties, demand and receive from the transportation commissioner, appointed under an act approved April first, eighteen hundred and seventy-eight, section nine, chapter one, all public property belonging to the office of said transportation commissioner,

in his possession, or under his control, and it is hereby made his duty to deliver the same to the said board.

Definition of term "transportation companies."

Sec. 14. The term "transportation companies" shall be deemed to mean and include:

1. All companies owning and operating railroads (other than street railroads) within this state;

2. All companies owning and operating steamships engaged in the transportation of freight or passengers from and to ports within this state;

3. All companies owning and operating steamboats used in transporting freight or passengers upon the rivers or inland waters of this state.

The word "company," as used in this act, shall be deemed to mean and include corporations, associations, partnerships, trustees, agents, assignees, and individuals. Whenever any railroad company owns and operates in connection with its road, and for the purpose of transporting its cars, freight, or passengers, any steamer or other water-craft, such steamer or other water-craft shall be deemed part of its said road. Whenever any steamship or steamboat company owns and operates any barge, canal boat, steamer, tug, ferryboat, or lighter, in connection with its ships or boats, the thing so owned and operated shall be deemed to be part of its main line.

Salaries, how paid.

Sec. 15. The salaries of the commissioners, secretary, bailiff, and all other officers and attaches in any manner employed by the board of commissioners, and all expenses of every kind created under this act, shall be paid out of any money in the general fund not otherwise appropriated, and the controller of state is hereby authorized and directed to draw his warrants from time to time for such purposes, and the state treasurer is hereby authorized and directed to pay the same.

Sec. 16. This act shall take effect immediately.

An act to limit and fix the rates of fares on street railroads in cities and towns of more than one hundred thousand inhabitants.

[Approved January 1, 1878; 1877-8, 18.]

Rates of fare of street railroads.

Section 1. No street railroad in any city or town of this state with more than one hundred thousand inhabitants shall be allowed to charge or collect a higher rate of fare than five cents for each passenger per trip of any distance in one direction, either going or coming, along any part of the whole length of the road or its connections.

Violation and forfeiture.

Sec. 2. Every violation of the provisions of section one of this act shall subject the owner or owners of the street railroad violating the same to a forfeiture to the person so unlawfully charged, or paying more than is therein allowed to be charged, the sum of two hundred and fifty dollars for each and every instance when such unlawful charge is made or collected, to be recovered by suit in any court of competent jurisdiction; such causes of action shall be assignable, and the action may be maintained by the assignee in his own name, and several causes of action arising out of unlawful charges or collections from different persons may be vested in the assignee and united in the same action.

Sec. 3. This act shall be in force from its passage.

An act relating to the operation of railroads.

[Approved March 23, 1893; Stats. 1893, 208.]

Section 1. Every railroad company now or hereafter engaged in the business of operating a railroad or railroads, by steam motive power, in the state of California, is hereby authorized and empowered to use electricity or steam, or both electricity and steam, for the purpose of propelling cars or trains on such railroad or railroads, or upon any portion thereof; provided, that in incorporated cities and towns having more than five thousand inhabitants, authority must first be obtained from the legislative authority of such city or town in the same manner in which franchises are granted.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect immediately.

An act to limit the time within which franchises or privileges for the construction, extension, or operation of street railroads may be granted by boards of supervisors of the several counties, and cities and counties of this state.

[Approved February 24, 1893; Stats. 1893, 29.]

Section 1. It shall be unlawful for the board of supervisors of any county or city and county, within the ninety days next preceding the date of holding a general election, and within the seventy days next immediately following, including the day of holding such general election, to authorize or pass any ordinance, order, or resolution granting to any person or persons, or association of persons, or corporation whatsoever, any privilege or franchise for the construction, extension, or operation of any street railroad, or extension of time for the construction or operation of any street railroad, over or upon any or part of any street, road, highway, squares, or park within the county or city and county.

Sec. 2. Any franchise or privilege granted, or attempted to be granted, in violation of, or contrary to, the provisions of this act shall be absolutely void and of no effect.

Sec. 3. All acts or parts of acts in conflict with this act are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its passage.

Compare in connection with this act, the act of 1901, p. 265.

An act requiring city, city and county, or town authorities to exact and require from persons or corporations seeking permission and authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, a satisfactory promise and undertaking to permit and allow mail carriers in the employ of the United States government at all times, while engaged in the actual discharge of duty, to ride on the cars of such railroad without paying fare; and to make such promise and undertaking a condition precedent to the granting of such permission and authority by such governing board.

[Approved February 27, 1893; Stats. 1893, 44.]

Section 1. In all cases hereafter, where application is made to the city, city and county, or town authorities, or to the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, for permission and authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, such authorities, before granting such permission and authority, in addition to the terms and restrictions which they are now, by law, authorized to impose, must exact and require from the persons or corporation asking or seeking such permission and authority, a satisfactory promise and undertaking to permit and allow mail carriers in the employ of the United States government, at all times while engaged in the actual discharge of duty, to ride on the cars of such railroad without paying any sum of money whatever for fare or otherwise. And such governing body of city, city and county, or town authorities must make such promise and undertaking on the part of such persons or corporations a condition precedent to the granting of such permission and authority to lay railroad tracks through streets or public highways of such city, city and county, or town; provided, that all such permissions and franchises shall be subject to all other provisions of the laws of this state applicable to street railroads in general, and subject to regulations from city, city and county, and town authorities.

Sec. 2. This act shall take effect and be in full force from and after its passage.

TAXATION.

An act imposing a tax on the issue of certificates of stock corporations.

[Approved April 1, 1878; 1877-8, 955. Repealed 1897, 243.]

TELEGRAPH COMPANIES.

Act granting franchise for telegraph company between Asia and America: See Stats. 1871-2, 97.

TRADEMARKS.

An act to protect the owners of bottles, boxes, siphons, and kegs used in the sale of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, beer, white beer, or other beverages.

[Approved March 31, 1891; Stats. 1891, 217. Amended 1903, 83.]

§ 1. Description to be filed with county clerk.
§ 2. Unlawful acts.
§ 3. Use presumptively unlawful.
§ 4. Issue of search-warrants—Punishment.
§ 5. Deposit not to be deemed a sale.
§ 6. Refiling of marks not required.

Section 1. Any and all persons engaged in manufacturing, bottling, or selling soda waters, mineral or aerated waters, porter ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages in bottles, siphons, or kegs, with his, her, its, or their name or names, or other marks or devices branded, stamped, engraved, etched, and blown, impressed, or otherwise produced upon such bottles, siphons, or kegs, or the boxes used by him, her, it, or them, may file in the office of the clerk of the county in which his, her, its, or their principal place of business is situated, and also in the office of the secretary of state, a description of the name or names, marks or devices, so used by him, her, it or them, respectively, and cause such description to be printed once in each week for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid.

Sec. 2. It is hereby declared to be unlawful for any person or persons, corporation or corporations, to fill with soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or with medicine, compounds, or mixtures, any bottle, box, siphon, or keg, so marked or distinguished, as aforesaid, with or by any name, mark, or device, of which a description shall have been filed and published, as provided in section one of this act, or deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take, or otherwise dispose of or traffic in the same, without the written consent of, or unless the

same shall have been purchased from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, box, siphon, or keg so filled, trafficked in, used, or handled as aforesaid. Any person or persons or corporation offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment not less than ten days nor more than six months, or by a fine of fifty cents for each and every such bottle, box, siphon, or keg so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment; and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than one dollar nor more than five dollars, for each and every bottle, box, siphon, and keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

Sec. 3. The use by any person other than the person or persons, corporation or corporations, whose device, name or mark shall be or shall have been upon the same, without such written consent or purchase, as aforesaid, of any such mark or distinguished bottle, box, siphon, or keg, a description of the name, mark, or device whereon shall have been filed and published, as herein provided, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or any article of merchandise, medicines, compounds, or preparations, or for the furnishing of such or similar beverages to customers, or the buying, selling, using, disposing of, or trafficking in of any such bottles, boxes, siphons, or kegs, by any person other than said persons or corporations having a name, mark, or device thereon, or such owner without such written consent, or the having by any junk dealer, or dealer in second-hand articles, possession of any such bottles, boxes, siphons, or kegs, a description of the marks, names, or devices wherein shall have been so filed and published as aforesaid, without such written consent, shall and is hereby declared to be presumptive evidence of the said unlawful use, purchase, or traffic in of such bottles, boxes, siphons, or kegs.

Sec. 4. Whenever any person, persons, or corporations, mentioned in section one of this act, or his, her, its, or their agent, shall make oath before any magistrate that he, she, or it has reason to believe, and does believe, that any of his, her, or their bottles, boxes, siphons or kegs, a description of the name, marks, or devices whereon has been so filed and published, as aforesaid, are being unlawfully used or filled, or had by any person or corporation manufacturing or selling soda, mineral, or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, and other beverages, or that any junk dealer, or dealer in second-hand articles, vender of bottles, or any other person or corporation, has any such bottles, boxes, siphons, or kegs, in his, her, or its possession, or secreted in any place, the said magistrate must thereupon issue a search-warrant to discover and obtain the same, and may also cause to be brought before him the person in whose possession such bottles, boxes, siphons, or kegs may be found, and then inquire into the circumstances of such possession; and if said magistrate finds that such person has been guilty of a violation of section two of this act, he must impose the punishment therein prescribed, and he shall also award possession of the property taken upon such search-warrant to the owner thereof.

Sec. 5. The requiring, taking or accepting of any deposit for any purpose, upon any bottle, box, siphon, or keg shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this act. [Amendment approved March 5, 1903; 1903, 83. In effect immediately.]

Sec. 6. Any person or persons, corporation or corporations, that has or have heretofore filed in the offices mentioned in section one of this act a description of the name or names, marks or devices, upon his, her, their, or its property therein mentioned, and has caused the same to be published according to the laws existing at the time of such filing and publication, shall not be required to again file and publish such description to be entitled to the benefits of this act; and any person or persons, corporation or corporations, having complied with the provisions of this act may as a part of the sale, assignment or transfer of all his, her, their or its said bottles,

boxes, siphons, or kegs, used as aforesaid, with his, her, their or its name or names or other marks or devices, branded, stamped, engraved, etched, and blown, impressed or otherwise produced upon such bottles, boxes, siphons and kegs, to any other person or persons, corporation or corporations, engaged in manufacturing, bottling, or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages, sell, assign, and transfer the sole and exclusive right of using said name or names, marks and devices in said business. And in the event of such sale, transfer or assignment as aforesaid, or in the event of the transfer by operation of law or by sale under order of any court of the entire business of such person or persons, corporation or corporations, or of the entire stock of bottles, boxes, siphons or kegs belonging to them, him, her or it, to any person or persons, corporation or corporations, engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, larger beer, weiss beer, white beer or other beverages, such person or persons, corporation or corporations, shall not be again required to file and publish a description of said name or names, marks or devices, hereunder, but shall be entitled to all the benefits of this act immediately upon acquiring such bottles, boxes, siphons or kegs or such business as aforesaid. [Amendment approved March 5, 1903; 1903, 83. In effect immediately.]

Sec. 7. All acts and parts of acts inconsistent herewith are, for the purposes of this act, hereby repealed.

UNINCORPORATED SOCIETIES.

See ante, title Co-operative Associations.

WAREHOUSES AND WHARFINGERS.

An act in relation to warehouse and wharfinger receipts, and other matters pertaining thereto.

[Approved April 1, 1878; 1877-8, 949.]

§ 1. Issuance of receipts for goods.
§ 2. Issuing of receipts upon goods as security.
§ 3. Second receipts, issuance of.

§ 4. Removal of goods when receipt issued.
§ 5. Receipts classed.
§ 6. Receipts to be indorsed.
§ 7. No delivery except on order.
§ 8. Non-negotiable receipts, how marked.
§ 9. Loss by fire.
§ 10. Felony.

Issuance of receipt for goods.

Section 1. That no warehouseman, wharfinger, or other person doing a storage business, shall issue any receipt or voucher for any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, grain, or other produce or commodity, shall have been bona fide received into store by such warehouseman, wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

Issuing of receipt upon goods as security for money loaned.

Sec. 2. That no warehouseman, wharfinger, or other person engaged in the storage business shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman, wharfinger, or other person, shall be in store and under control at the time of issuing such receipt or voucher as aforesaid.

Second receipts not to be issued, except, etc.

Sec. 3. That no warehouseman, wharfinger, or other person as aforesaid, shall issue any second receipt for any goods, wares, merchandise, grain, or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

Removal of goods when receipt is issued.

Sec. 4. That no warehouseman, wharfinger, or other person as aforesaid, shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control,

any goods, wares, merchandise, grain, or other produce or commodity for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt or receipts plainly indorsed thereon in ink.

Receipts classed.

Sec. 5. Warehouse receipts for property stored shall be of two classes: 1. Transferable or negotiable; and, 2. Nontransferable or non-negotiable. Under the first of these classes, all property shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement of the party shall be deemed a valid transfer of the property represented by such receipt, and may be in blank or to the order of another. All warehouse receipts for property stored shall distinctly state on their face for what they are issued, as also the brands and distinguishing marks; and in the case of grain, the number of sacks, and number of pounds, any kind of grain; also the rate of storage per month or season charged for storing the same.

Receipt to be indorsed.

Sec. 6. No warehouseman, or other person or persons, giving or issuing negotiable receipts for goods, grain, or other property on storage, shall deliver said property, or any part thereof, without indorsing upon the back of said receipt or receipts, in ink, the amount and date of the deliveries. Nor shall he or they be allowed to make any offset, claim, or demand other than is expressed on the face of the receipt or receipts issued for the same, when called upon to deliver said goods, merchandise, grain, or other property.

No delivery except on order.

Sec. 7. No warehouseman, or person or persons doing a general storage business, giving or issuing non-negotiable or nontransferable receipts for goods, grain, or other property on storage, shall deliver said property, or any part thereof, except upon the written order of the person or persons to whom the receipt or receipts were issued.

Non-negotiable receipts, how marked.

Sec. 8. All receipts issued by any warehouseman or other person under this act, other than negotiable, shall have printed across their face, in bold, distinct letters, in red ink, the words "non-negotiable."

Loss by fire.

Sec. 9. No warehouseman, person or persons doing a general storage business, shall be responsible for any loss or damage to property by fire while in his or their custody, or provided reasonable care and vigilance be exercised to protect and preserve the same.

Felony.

Sec. 10. Any warehouseman, wharfinger, person or persons, who shall violate any of the foregoing provisions of this act, is guilty of felony, shall be subject to indictment, and upon conviction, shall be fined in a sum not exceeding five thousand dollars ($5,000), or imprisonment in the state prison of this state not exceeding five years, or both. And all and every person aggrieved by the violation of any of the provisions of this act may have and maintain an action against the person or persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequent, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted under the act or not.

WATER COMPANIES.

Irrigation: See General Laws, title Irrigation.

An act to regulate and control the sale, rental, and distribution of appropriated water in this state, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the places of use.

[Approved March 12, 1885; 1885, 95; 1897, 49; 1901, 80.]

§ 1. Use of appropriated public water.
§ 2. Supervisors may fix rates.
§ 3. Petition for fixing rates.
§ 4. Hearing of petition—Value of waterworks.
§ 5. Rules to be observed in fixing rates.
§ 6. Changing rates.
§ 7. Record of rates to be published.
§ 8. Water to be furnished at rates fixed.
§ 9. Penalty for excessive charges.
§ 10. To sell to all persons.
§ 11. Condemning land for right of way.
§ 11½. Contracts in existence, how affected.

Use of appropriated water public.

Section 1. The use of all water now appropriated, or

that may hereafter be appropriated, for irrigation, sale, rental, or distribution, is a public use, and the right to collect rates or compensation for use of such water is a franchise, and except when so furnished to any city, city and county, or town, or the inhabitants thereof, shall be regulated and controlled in the counties of this state by the several boards of supervisors thereof, in the manner prescribed in this act.

Supervisors may fix rates.

Sec. 2. The several boards of supervisors of this state, on petition and notice as provided in section three of this act, are hereby authorized and required to fix and regulate the maximum rates at which any person, company, association, or corporation, having or to have appropriated water for sale, rental, or distribution in each of such counties, may and shall sell, rent, or distribute the same.

Petition for fixing rates.

Sec. 3. Whenever a petition of not less than twenty-five inhabitants, who are tax-payers of any county of this state, shall, in writing, petition the board of supervisors thereof, to be filed with the clerk of said board, to regulate and control the rates and compensation to be collected by any person, company, association, or corporation, for the sale, rental, or distribution of any appropriated water, to any of the inhabitants of such county, and shall in such petition specify the persons, companies, associations, or corporations, or any one or more of them, whose water rates are therein petitioned to be regulated or controlled, the clerk of such board shall immediately cause such petition, together with a notice of the time and place of hearing thereof, to be published in one or more newspapers published in such county; and if no newspaper be published therein, then shall cause copies of such petition and notice to be posted in not less than three public places in such counties, and such publication and notice shall be for not less than four weeks next before the hearing of said petition by said board; such notice to be attached to said petition shall specify a day of the next regular term of the session of the said board not less than thirty days after the first publication or posting thereof, for the hearing of said petition, which shall impart notice to all such persons, companies, associations, and corporations mentioned in such petition, and

all persons interested in the matters of such petition and notice. Such board may also cause citations to issue to any person or persons within such county to attend and give evidence at the hearing of such petition, and may compel such attendance by attachment.

Hearing of petition—Value of water-works.

Sec. 4. At the hearing of said petition the board of supervisors shall estimate, as near as may be, the value of the canals, ditches, flumes, water-chutes, and all other property actually used and useful to the appropriation and furnishing of such water, belonging to and possessed by each person, association, company, or corporation, whose franchise shall be so regulated and controlled; and shall in like manner estimate as to each of such persons, companies, associations, and corporations, their annual reasonable expenses, including the cost of repairs, management, and operating such works; and, for the purpose of such ascertainment, may require the attendance of persons to give evidence, and the production of papers, books, and accounts, and may compel the attendance of such persons and the production of papers, books, and accounts, by attachments, if within their respective counties.

Rules to be observed in fixing rates.

Sec. 5. In the regulation and control of such water rates for each of such persons, companies, associations, and corporations, such board of supervisors may establish different rates at which water may and shall be sold, rented, or distributed, as the case may be; and may also establish different rates and compensation for such water so to be furnished for the several different uses, such as mining, irrigating, mechanical, manufacturing, and domestic, for which such water shall be supplied to such inhabitants, but such rates as to each class shall be equal and uniform. Said board of supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations, and corporations so furnishing such water to such inhabitants shall be not less than six nor more than eighteen per cent upon the said value of the canals, ditches, flumes, chutes, and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations, and corporations; but in estimating such net

receipts and profits, the cost of any extensions, enlargements, or other permanent improvements of such water rights or water-works shall not be included as part of the said expenses of management, repairs, and operating of such works, but when accomplished, may and shall be included in the present cost and cash value of such work. In fixing said rates, within the limits aforesaid, at which water shall be so furnished as to each of such persons, companies, associations, and corporations, each of said board of supervisors may likewise take into estimation any and all other facts, circumstances, and conditions pertinent thereto, to the end and purpose that said rates shall be equal, reasonable and just, both to such persons, companies, associations, and corporations, and to said inhabitants; and each such board of supervisors shall designate what proportion of the rates so fixed shall be for the said annual reasonable expenses of each of such persons, companies, associations or corporations, and what proportion of the rates so fixed shall be for the said net annual receipts and profits to such persons, companies, associations or corporations. The said rates, when so fixed by such board, shall be binding and conclusive for not less than one year next after their establishment, and until established anew or abrogated by such board of supervisors, as hereinafter provided. And until such rates shall be so established or after they shall have been abrogated by such board of supervisors, as in this act provided, the actual rates established and collected by each of the persons, companies, associations, and corporations now furnishing, or that shall hereafter furnish, appropriated waters for sale, rental, or distribution to the inhabitants of any of the counties of this state, shall be deemed and accepted as the legally established rates thereof. [Amendment approved February 28, 1901; Stats. 1901, p. 80.]

Changing rates.

Sec. 6. At any time after the establishment of such water rates by any board of supervisors of this state, the same may be established anew, or abrogated in whole or in part by such board, to take effect not less than one year next after such first establishment, but subject to

said limitation of one year, to take effect immediately in the following manner: Upon the written petition of inhabitants as hereinbefore provided, or upon the written petition of any of the persons, companies, associations or corporations, the rates and compensations of whose appropriated waters have already been fixed and regulated, and are still subject to such regulation by any board of supervisors of this state, as in this act provided; and upon the like publication or posting of such petition and notice, and for the like period of time as hereinbefore provided, such board of supervisors shall proceed anew, in the manner hereinbefore provided, to fix and establish the water rates for such person, company, association, or corporation, or any number of them, in the same manner as if such rates had not been previously established, and may, upon the petition of such inhabitants, but not otherwise, abrogate any and all existing rates theretofore established by such board. All water rates, when fixed and established as herein provided shall be in force and effect until established anew or abrogated, as provided in this act.

Record of rates to be published.

Sec. 7. Each board of supervisors of this state, when fixing and establishing, or fixing and establishing anew, or abolishing any previously established water rates, as hereinbefore provided, shall cause a record to be made thereof in the records of such board, and cause the same to be published or posted in the manner and for the time required for the publication or posting of said petitions and notices.

Water to be furnished at rates fixed.

Sec. 8. Any and all persons, companies, associations, or corporations, furnishing for sale, rental, or distribution, any appropriated waters to the inhabitants of any county or counties of this state (other than to the inhabitants of any city, city and county, or town, therein), shall so sell, rent, or distribute such waters at rates not exceeding the established rates fixed and regulated therefor by the boards of supervisors of such counties, or as

fixed and established by such person, company, association, or corporation, as provided in this act.

Penalty for excessive charges.

Sec. 9. If any person, company, association, or corporation, whose water rates for any county of this state have been fixed and regulated by a board of supervisors, as in this act provided, and while such rates are in force, shall collect, for any appropriated water, furnished to any inhabitant of such county water rates in excess of such established rates, shall be liable, in an action by any such inhabitant so aggrieved, to a recovery of the whole rate so collected, together with actual damages sustained by such inhabitant, with costs of suit.

To sell to all persons.

Sec. 10. Every person, company, association, and corporation, having in any county in the state (other than in any city, city and county, or town therein) appropriated waters for sale, rental, or distribution, to the inhabitants of such county, upon demand therefor, and tender in money of such established water rates, shall be obliged to sell, rent, or distribute such water to such inhabitants at the established rates regulated and fixed therefor, as in this act provided, whether so fixed by the board of supervisors or otherwise, to the extent of the actual supply of such appropriated waters of such person, company, association, or corporation, for such purposes. If any person, company, association, or corporations, having water for such use, shall refuse compliance with such demand, or shall neglect, for the period of five days after such demand, to comply therewith to the extent of his or its reasonable ability so to do, shall be liable in damages to the extent of the actual injury sustained by the person or party making such demand and tender, to be recovered, with costs.

Condemning land for right of way.

Sec. 11. Whenever any person, company, association, or corporation shall have acquired the right to appropriated water, or shall have acquired the right to appropriate such water in this state, such person, company, association, or corporation, may proceed to condemn the land and premises necessary to such right of way, under

the provisions of title VII of part III of the Code of Civil Procedure of this state, and amendments made and to be made thereto, and all the provisions of said code, so far as the same can be made applicable, relating to the condemnation and taking of property for public uses, shall be applicable to the provisions of this act.

Contracts in existence, how affected.

Sec. 11½. Nothing in this act contained shall be construed to prohibit or invalidate any contract already made, or which shall hereafter be made, by or with any of the persons, companies, associations, or corporations described in section two of this act, relating to the sale, rental, or distribution of water, or to the sale or rental of easements and servitudes of the right to the flow and use of water; nor to prohibit or interfere with the vesting of rights under any such contract. [New section, added March 2, 1897; Stats. 1897, 49.]

Sec. 12. This act shall take effect and be in force from and after its passage.

An act authorizing the boards of supervisors of the counties in which water is sold for the purpose of irrigation to fix the rates at which water shall be sold.

[Approved March 26, 1880; 1880, 16 (Ban. ed. 59.).]

§ 1. Supervisors to fix rates.
§ 2. Forfeiture of franchise.
§ 3. Action to enforce forfeiture.
§ 4. To compel performance of duties of supervisors.
§ 5. Control of use of water prohibited.

Supervisors to fix rates.

Section 1. The boards of supervisors of the several counties of this state in which water is appropriated, furnished, and sold principally for the purposes of irrigation, are hereby authorized and required to fix the maximum rates at which such water shall be furnished and sold, at a meeting to be held in the month of February of each year; provided, that in the year eighteen hundred and eighty such rates shall be fixed at the first meeting after the passage of this act. The rates so fixed and established shall be in force from and after the first day of July, after the date of fixing said rates, and shall continue in force for the period of one year; provided, that

nothing in this section shall apply to water furnished within the limits of any incorporated city and county, city, or town.

Forfeiture of franchise.

Sec. 2. Any person, company, or corporation collecting rates for water furnished for irrigation in any county in this state in excess of the rates as provided in section one of this act shall forfeit for the public use the franchise and water-works of such person, company, or corporation to the county in which such excessive rates were charged.

Action to enforce forfeiture.

Sec. 3. Upon affidavit being made by any interested party, setting forth that any such company, person, or corporation has charged rates for water furnished for irrigating purposes in excess of the rates established by the board of supervisors, the said board of supervisors shall cause the district attorney to commence an action in the superior court of the county, within thirty days from the receipt by them of such affidavit, to enforce the forfeiture of the franchise and water-works of such person, company, or corporation.

To compel the performance of the duties of supervisors.

Sec. 4. If the board of supervisors fail or neglect to fix the rates, as provided in section one of this act, or if the board of supervisors fail or neglect to commence the action provided for in section three of this act, as therein provided, any interested person may commence proceedings to compel the performance of such duties.

Control of use of water prohibited.

Sec. 5. No person, company, or corporation selling water for irrigation shall be permitted to exercise any control as to the use of the water after its delivery to the purchaser.

Sec. 6. This act shall take effect immediately.

Compare the act of 1885, 95, amended 1897, 49; 1901, 80, to regulate and control sale, rental, distribution, etc., of water, set forth in full, ante.

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